TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 201.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, ET AL., APPELLANTS,

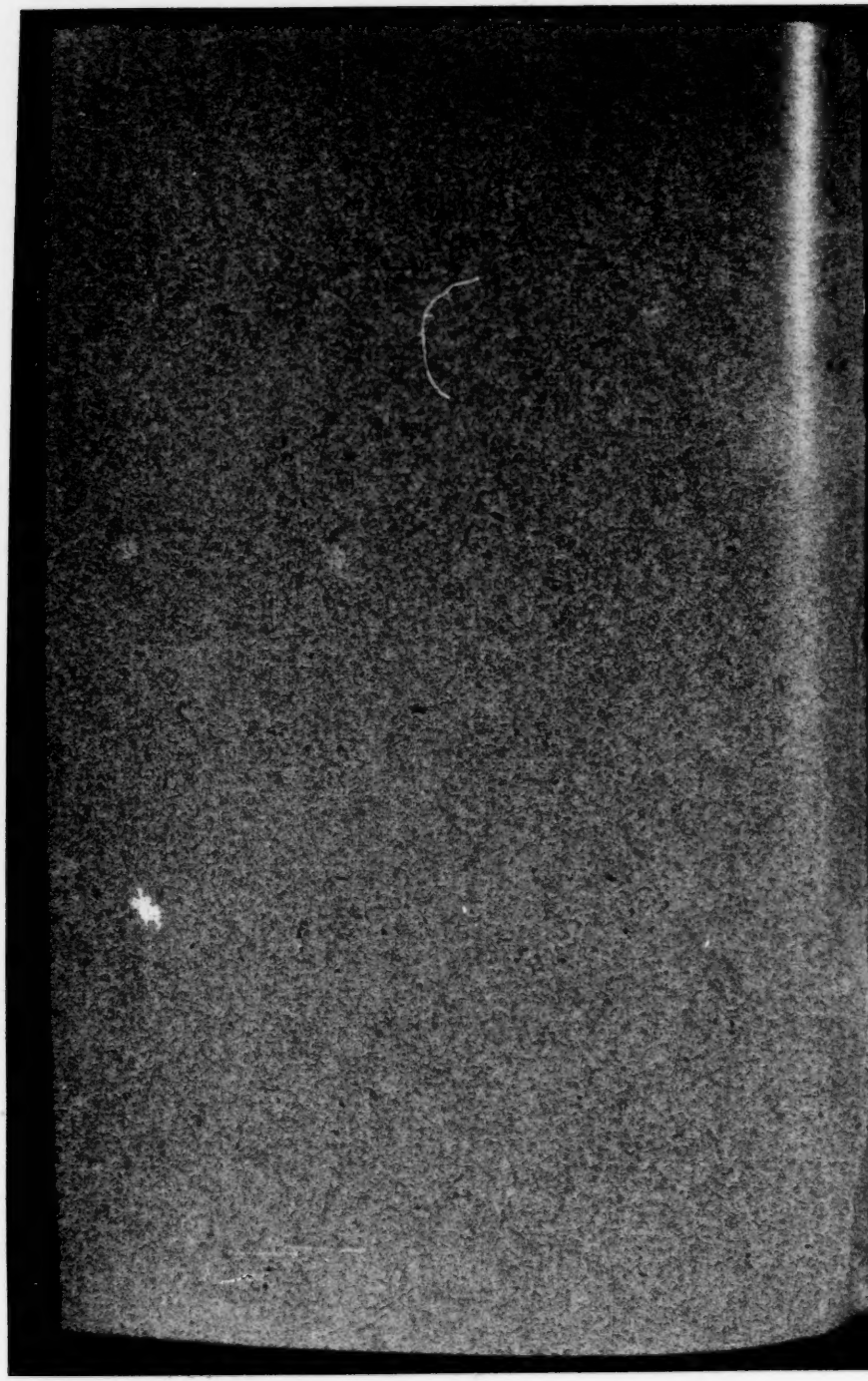
vs.

THE SAN DIEGO LAND AND TOWN COMPANY OF MAINE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED JANUARY 30, 1899.

(17,286.)



(17,286.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 201.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, ET AL., APPELLANTS,

vs.

THE SAN DIEGO LAND AND TOWN COMPANY OF MAINE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 12, 1899.

a UNITED STATES OF AMERICA, *ss.*:

To San Diego Land & Town Company of Maine, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 1st day of February, A. D. 1899, pursuant to an order allowing an appeal entered in the clerk's office of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California from a final decree made and entered on the 5th day of December, 1898, in that certain cause being in equity, No. 839, wherein H. C. Osborne, William Knapp, A. Barber, Mrs. E. L. Williams, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr., H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merrian, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W.
b Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, partners, doing business under the firm name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, executors of the estate of G. A. Garrett-

son, deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, partners, doing business under the firm name of Howe Brothers; Arthur Ryan and Michael Mack, partners, doing business under the firm name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes are complainants and appellants and you are defendant and appellee, to show cause, if any there be, why the said decree rendered against said appellants, as in the said order allowing the appeal mentioned, should not be corrected and speedy justice should not be done to the parties
c in that behalf.

Witness the Honorable Erskine M. Ross, United States circuit judge for the ninth circuit, this 20th day of January, A. D. 1899, and of the Independence of the United States the one hundred and twenty-third.

Jan'y 20, 1899.

ERSKINE M. ROSS,
United States Circuit Judge for the Ninth Circuit.

d [Endorsed:] In the Supreme Court of the United States. H. C. Osborne *et al.*, appellants, *vs.* San Diego Land & Town Company of Maine, appellee. Citation. Service of the within citation is hereby acknowledged this 20th day of January, 1899. Works & Works, solicitors for complainant and appellee. Filed Jan. 20, 1899. Wm. M. Van Dyke, clerk. —— ——, deputy.

1 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

No. 839.

H. C. Osborne, William Knapp, A. Barber, Mrs. E. L. Williams, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr.; H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger.

R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry
2 Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Complainants,

vs.

San Diego Land & Town Company of Maine, Defendant.

3 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

No. 839.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, MRS. E. L. WILLIAMS, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr., H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J.
4 Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under

the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Complainants,

vs.

SAN DIEGO LAND & TOWN COMPANY OF MAINE, Defendant.

Bill in Equity.

To the honorable the judges of the circuit court of the United States within and for the southern district of California, sitting in equity:

5 Humbly complaining, show unto your honors your orators, H. C. Osborne, William Knapp, A. Barber, E. L. Williams, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr.; H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, Charles O. Brown, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Ailes, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Mohnike Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Haves, A. A. Grout, J. H. Bowen, R. H. Longshare, W. O. Bowen, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenberg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, partners, doing business under the firm name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, F. A. Moses, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh,

6 C. S. Johnson, C. W. Ellsworth, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson

Ah Quin, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Pettis, Morton Penfield, J. A. Thomas, J. O. Rhinehart, William Doyle, F. O. Rhinehart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terrill, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elizabeth A. Garrettson, executors of the estate of G. A. Garrettson, deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, partners, doing business under the firm name of Howe Brothers; Arthur Ryan and Michael Mack, partners, doing business under the firm name of Ryan & Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, William Campbell, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downs, N. W. Downs, and residents and citizens of the county of San Diego, in the State of California, and in the district aforesaid:

That on the 6th day of January, 1896, Chas. D. Lanning, as receiver of the San Diego Land & Town Company, a corporation organized under the laws of the State of Kansas, hereinafter named, exhibited his bill of complaint in this honorable court against your orators and thereby set forth in words and figures the following, to wit:

"*Bill in Equity.*

To the honorable the judges of the circuit court of the United States within and for the southern district of California,
7 sitting in equity:

Charles D. Lanning, a resident and citizen of the State of Massachusetts, receiver of the San Diego Land & Town Company, a corporation duly organized and existing under and by virtue of the laws of the State of Kansas, and a resident and citizen of said State, brings this his bill against H. C. Osborne, William Knapp, A. Barber, E. L. Williams, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr., H. S. Whittaker, A. Barnett, J. S. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, Charles O. Brown, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzel-

berger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslie, Herman Banke, J. C. Ailes, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Mohnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I N. Lamson, George D. Hayes, A. A. Grout, J. H. Bowen, R. H. Longshare, W. O. Bowen, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, partners, doing business under the firm name of
8 Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, H. H. Rice, W. J. Henderson, P. W. Morse, O. Darling, Walter Price, S. J. Bradt, R. W. Vaughn, F. A. Moses, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoch, C. S. Johnson, C. W. Ellsworth, Wm. Steckle, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quin, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, —— Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Pettis, Morton Penfield, J. A. Thomas, J. O. Rhinehart, William Doyle, F. O. Rhinehart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. F. Terrill, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elizabeth A. Garrettson, executors of the estate of G. A. Garrettson, deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, partners, doing business under the firm name of Howe Brothers; Arthur Ryan and Michael Mack, partners, doing business under the firm name of Ryan and Mack; F. E. Leslie and H. P. Whitney, partners, doing business under the firm name of Leslie & Whitney; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, William Campbell, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnston, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downs, N. W. Downs, and I. P. Dana, residents and citizens of the county of San Diego, in the State of California and in the district aforesaid.

And your orator complains and says that the San Diego Land & Town Company is and was at all times herein mentioned a corporation duly organized and existing under and by virtue of the laws of the State of Kansas and doing business in the State of
9 California.

That the said company is and has been during said times

the owner of valuable water, water rights, reservoirs, and an entire water system for furnishing water to consumers for domestic irrigation and other purposes for which water is needed for consumption and of a franchise for the impounding, sale, disposition, and distribution of the waters owned and stored by it to the defendants and other consumers and to the city of National City and its inhabitants.

That its main reservoir and supply of water is and was at the times hereinafter mentioned situate in the Sweetwater river, so called, a small stream in the said county of San Diego, about five miles distant from the city of National City, and its system of reservoirs, mains, flumes, aqueducts, and pipes covers and can supply but a limited amount of territory, consisting of certain farming lands within and outside of said National City and in part of the residence portion of said city of National City.

That your orator was on the 4th day of September, 1895, by an order and decree of the circuit court of the United States for the district of Massachusetts, duly made and entered, appointed receiver of all of the property of the San Diego Land & Town Company, with full power to take possession of and manage, operate, and control all of its said property, including the plant and water system in this bill mentioned, and that by an order and decree of this court, duly made and entered on the 30th day of September, 1895, the said first named order and decree was duly confirmed as to all property of said company within the jurisdiction of this court, including said water plant and system, and your orator was by said last-named order duly appointed receiver of said property, with full power and authority to manage and control the same, and, by virtue of said orders and decrees, your orator took possession of and is managing said property as such receiver.

That the said company has, in procuring the water and water rights, reservoirs, and distributing system owned by it, as aforesaid, and preparing itself to supply consumers with water, expended, up to January 1, 1896, the sum of one million twenty-two thousand four hundred seventy-three and $\frac{54}{100}$ dollars ($1,022,473.54), which was reasonably necessary for said purposes.

That by the expenditure of said large sum said company has procured and owns, subject to the public use and the regulation thereof by law, water, water rights, a reservoir site, and a reservoir of the capacity of six thousand million gallons of water, and has constructed and laid therefrom its water mains necessary to supply the defendants and their lands, hereinafter mentioned, and the said city of National City and its inhabitants with water, and has constructed and put in mains, pipes, and all other things necessary to connect said water supply with the premises and buildings of the defendants and each of them and with the premises and buildings of said city and its inhabitants and to furnish them and each of them with water, and was at the time hereinafter mentioned furnishing them and each of them with water.

Your orator further shows that the defendants herein are the owners, respectively, of tracts of land under the system of said

land & town company, most of said defendants owning and holding small tracts of only a few acres each.

That each of said defendants has, by purchase or otherwise, become the owner of a water right—to a part of the water appropriated and stored by said company necessary to irrigate his tract of land—and is liable to pay for the use of said water yearly rental such as said company is entitled to charge and collect.

That the annual expense of operating and keeping in repair the said reservoir and water system of said company and furnishing said consumers with water is, including interest on its bonds and excluding the natural and necessary depreciation of its system, $33,034.99.

That in order to pay the said company the amount of its annual expenses and income of six per cent. on the amount actually invested in its said water, water rights, and water system up to the first day of January, 1896, it is necessary that such rates for water sold and consumed be so fixed as to realize to the said company the sum of one hundred nineteen thousand seven hundred ninety-one and $\frac{66}{100}$ dollars ($119,791.66).

That the total amount that was realized by the said company from sales of water and water rights and from all other sources on account of its business of supplying water to consumers, as aforesaid, outside of the said city of National City for the year ending January 1st, 1896, was about fifteen thousand dollars ($15,000.00), and no more than that sum can probably be realized for the year ending January 1st, 1897, at the rates now prevailing.

That all of the mains and pipes of the said company and other parts of its property so used in furnishing water to consumers are perishable property and require to be replaced at least once in sixteen years and require frequent repairs.

That in order to acquire said water and water rights and construct its said system of water works said company was compelled to and did borrow large sums of money, to wit, three hundred thousand dollars ($300,000.00), and it is compelled to pay as interest thereon the sum of twenty-one thousand dollars ($21,000.00) annually, which sum must be realized from the sale of its water and is a part of its operating expenses; that the proportionate share of the revenue of the said company that should be raised by water rates within the limits of said National City, as compared with the revenues that should be raised and paid as water rates by consumers outside of said city, is about one-third.

That the amount that can be realized from said city and its inhabitants per annum from the rates now prevailing under the ordinance hereinafter mentioned is about ten thousand seven hundred and fifteen dollars ($10,715.00) per annum and no more.

That the value of the water, water rights, reservoirs, franchises, and property necessary for the proper operation of its business and now owned by said company is one million one hundred thousand dollars ($1,100,000.00), and the same is necessary for the use of the

said company in furnishing water to said defendants and other consumers.

That no other person or corporation is or ever has been furnishing a supply of water to said defendants and other consumers, nor is there now nor has there been any other system of water works by which said defendants can be furnished with water, but the franchise and right of the company to furnish water to said consumers is not exclusive of other persons or corporations.

That the said city of National City is a municipal corporation of the sixth class organized under the general laws of the State of California, and the rates to be charged for water within said city are fixed by the board of trustees of said city, as provided by the laws of the State of California; that on the 20th day of February, 1895, the said board of trustees, assuming and claiming to act under and in accordance with the constitution and laws of said State, passed and adopted an ordinance of said city fixing the water rates to be charged for water sold and furnished by said company to consumers within said city.

Your orator further shows to your honors that said land & town company commenced to furnish water to consumers in the year 1787; that it was informed by its engineer that its system and the supply of water that could be stored thereby would furnish water to consumers sufficient to irrigate twenty thousand acres of land and supply such water, in addition thereto, as would be nec-
13 essary for domestic use inside and outside of said city of National City; that the company was then unfamiliar with the operation of a plant and system of the kind constructed by it, and did not know what the cost of operating and maintaining the same would be; that, relying upon the said report and estimate of its engineer as to the probable duty of its reservoir and the capacity of its said system and believing that by fixing and charging an annual rate of $3.50 per acre for irrigation it could meet its operating expenses and pay it some interest on its investment, it fixed and established and has since charged said rate of $3.50 per acre per annum and no more until January 1st, 1896; but your orator further shows to your honors that instead of being able to supply from its said system sufficient water to irrigate twenty thousand acres it has been demonstrated by its actual experience that said system will not supply water sufficient to irrigate to exceed seven thousand acres, together with the water demanded for domestic use, and it is believed not to exceed six thousand acres, although there are about ten thousand acres under said system susceptible of irrigation.

And your orator further shows that at the rate of $3.50 per acre, if water should be demanded and used upon the whole of the lands which the system is able to supply with water and rates are allowed to said National City equally high for domestic use and irrigation, said company would not be able to pay its operating expenses and maintain its plant and system, and that said company has been and still is, under said rates, losing money every year, and its said plant and system has been and is gradually going to decay from natural

depreciation consequent upon its use and supplying consumers with water without any revenue or means being provided for replacing the same, whereby the said system and the money invested by said company therein will be wholly lost to it, and it will, if said rate of $3.50 per acre is maintained, be compelled to furnish water to consumers at an actual and continual loss.

14 Your orator further shows that in order to pay the cost of operating the plant of said company and maintain the same and pay said company a reasonable interest on its investment in said plant, or a reasonable sum for its services in supplying water to the defendants and other consumers, it will be necessary for it to charge a rate per acre per annum of not less than $7.00 for irrigation purposes; that said sum of $7.00 per acre is a reasonable rate for consumers to pay and the smallest amount for which said company can furnish the water without loss to it.

Your orator further shows that by the laws of the State of California the board of supervisors may, upon the petition of twenty-five inhabitants and tax-payers of the county, fix the rates of yearly rental to be collected by any company furnishing water to consumers, but no such petition has ever been presented or rates fixed in the case of the said land & town company.

Your orator further shows that for the reasons above stated said land & town company gave notice to the defendants that on January 1st, 1896, it would establish a rental of $7.00 per acre per annum for water supplied to their and each of their lands for irrigation, and that from and after said date they and each of them would be required to pay said sum for the irrigation of their and each of their lands, and your orator, after his appointment as receiver, as aforesaid, and before said date, gave a similar notice.

Your orator further shows that the said defendants and each of them have refused to pay said rate of $7.00 per acre, and maintain that neither the said land & town company nor your orator, as receiver thereof, have any legal right to increase the amount of rental to be paid by them or any of them, and that the rate of $3.50 established and collected by the said land & town company must be and remain the established rate of rental until a rate

15 is established by the board of supervisors of the county in which said plant is situated, as provided by law.

Your orator further shows that an increase of the rate for such rentals is absolutely necessary to enable him to maintain and operate said plant and pay the expenses of such maintenance and operation as he is required by law to do.

And your orator further shows that in order to enforce the payment of said rentals he has, as he is authorized by law to do, caused the water to be shut off from the premises of the defendants and each of them until such rentals are paid, and said defendants threaten to and will, unless restrained from so doing by this court, commence suits in the superior court of the county of San Diego, State of California, to compel your orator to turn on and furnish water to their said lands without the payment of $7.00 per acre rental on the ground that they are entitled to the use of said water for $3.50 per

acre, the rate heretofore prevailing, and for damages for cutting off their said supply of water; that the rights of said defendants are the same, and the determination of the question of the right of said land & town company and of your orator to increase the rate of rental to be charged and collected will affect all of the said defendants in the same way and to the same extent, except that the quantity of land owned by the several defendants is different.

And your orator further shows to your honors that the bringing of said suits by said defendants separately will involve the said land & town company, your orator, and said defendants in a multiplicity of suits and put them and each of them to great and unnecessary cost and expense, and will seriously hinder your orator in the proper operation and management of the property of said company and the settlement of its outstanding debts, liabilities, and obligations, when all of the questions involved in such litigation and the rights of all of the parties in interest can be better settled and de-
16 termined in one suit, and vexatious litigation and unnecessary expense and unnecessary interference with your orator's management and control of the property and business of said company be thereby avoided.

Your orator further shows that the proposed increase in rates will add to the revenue and earnings of said company from the sale and distribution of the water from its said system, with the amount of land now under irrigation, not less than $14,000.00 per annum, and upon the whole of the lands that can be irrigated by the system of the company of not less than $21,000.00 per annum.

Your orator further shows that, as he is informed and believes, the defendants Chula Vista School District, Sunnyside School District, and Sweetwater School District are corporations duly organized and existing under the laws of the State of California; the defendants Edward Gulick, William Gulick, and Henry Gulick are partners, doing business under the copartnership name of Gulick Brothers; the defendants D. F. Garrettson and Elizabeth A. Garrettson were, on the 5th day of September, 1895, by an order of the superior court of the county of San Diego, State of California, duly made and entered, appointed executors of the estate of G. A. Garrettson, deceased, and duly qualified as such executors and are now acting as such; the defendants I. M. Howe and H. B. Howe are partners, doing business under the copartnership name of Howe Brothers; the defendants Arthur Ryan and Michael Mack are partners, doing business under the copartnership name of Ryan and Mack, and the defendants F. E. Leslie and H. P. Whitney are partners, doing business under the firm name of Leslie & Whitney.

Wherefore your orator prays your honors to grant to him the writ of injunction against the defendants and each of them, enjoining them from prosecuting in the State courts or elsewhere separate actions against your orator or said land & town company; that said defendants and each of them be required to appear in
17 this suit and set up any claims they may have against the right of your orator or said company to increase the rental for water furnished by said company, as aforesaid, and that it be

finally decreed by this court that your orator, as such receiver, and said company have the right to increase the amount of its rentals to any reasonable sum, and that the sum of $7.00 per acre per annum is a reasonable rental to be charged, and that the defendants and each of them be required to pay said rate as a condition upon which water shall be furnished to them, and that your orator shall have generally such other and further relief as the nature of his case may require.

Therefore will your honors grant unto your orator the writ of subpœna issuing out of and under the seal of this court, to be directed to said defendants, commanding them and each of them by a certain day and under a certain penalty therein inserted to appear before your honors in the circuit court aforesaid, and then and there answer the premises and abide the order and decree of the court.

WORKS & WORKS,
Solicitors for Complainant.

STATE OF CALIFORNIA, } ss:
County of San Diego, }

John E. Boal, being duly sworn, says that he is the agent of the receiver of The San Diego Land & Town Company, complainant in the above-entitled cause; that he has read the foregoing bill in equity and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

JOHN E. BOAL.

Subscribed and sworn to before me this 4th day of January, 1896.

[SEAL.] LEWIS R. WORKS,
Notary Public in and for the County of San Diego,
18 *State of California.*"

And your orators having appeared in said cause, and having put in an original answer, an amended answer, and a supplemental answer, and the whole of the same having been expunged from the record upon exceptions filed by the said C. D. Lanning, receiver, complainant therein, for irrelevancy and impertinence, and your orators having been directed to make further answer, your orators did, upon the 13th day of September, 1897, put in and file their further answer and supplemental answer to said bill in words and figures following, to wit:

(After title of cause and commencement of answer in the usual form.)

The court having sustained exceptions to the original answer, and to the amended answer, and to the supplemental answer heretofore filed for irrelevancy and impertinence, and having expunged the same, and having also sustained exceptions for insufficiency and directed further answer to be made by the defendants herein, now

these defendants, saving and reserving unto themselves the benefits of all exceptions to the errors and imperfections in the bill contained, for further answer and supplemental answer to so much thereof as they are advised it is necessary or material for them to answer to, do aver and say that—

They admit that the San Diego Land & Town Company is and at all times mentioned in the complaint was a corporation duly organized and existing under and by virtue of the laws of the State of Kansas and doing business in the State of California; and they aver that the corporate powers of said corporation, as declared in its articles of association, are as follows, to wit:

"The purpose for which this corporation is formed are the encouragement of agriculture and horticulture, the maintenance of public works, the maintenance of a public and private cemetery; the purchase, location and laying out of town sites and
19 the sale and conveyance of the same in lots and subdivisions or otherwise; the supply of water to the public; the erection of buildings and the accommodations and loan of funds for the purchase of real property; the establishment and maintenance of a hotel; the promotion of immigration; the construction and maintenance of sewers; the erection and maintenance of market-houses and market places; the construction and maintenance of dams and canals for the purpose of water works, irrigation or manufacturing purposes; the conversion and disposal of agricultural products by means of mills, elevators, markets and stores, or otherwise; the accumulation and loan of funds; the erection of buildings and the purchase and sale of real estate for the benefit of its members. And the construction and maintenance of such other improvements as may be necessary or desirable for the proper exercise of any or all such corporate purposes."

They deny that said corporation is or at any time was the owner of any water or water rights or reservoir or any water system, as alleged in the bill of complaint, except as hereinafter set forth, or that it is or at any time was the owner of any water or water rights or reservoirs or any water system for or devoted to any purpose except as hereinafter set forth.

They admit and say that said company became, as hereinafter set forth, the owner of a dam, reservoir, and an entire water system, adapted to the furnishing of water for domestic, irrigation, and other purposes for which water is needed for consumption, and of the corporate franchise, as in its said articles of incorporation set forth; and they say that said dam and reservoir are entirely on land, constituting part of the bed of the Sweetwater river, and on riparian land on both sides of said river, contiguous thereto.

That said corporation became the owner in fee-simple of
20 the ground occupied by its dam, reservoir, pipe lines, and conduits, and all the real estate occupied by its water system, by private grants to it from the owners thereof by mesne conveyances from the owners of the Mexican grants in said San Diego county, known as the Rancho de la Nacion and the Jamacha rancho; that it acquired the title to all the said land occupied by its reservoir

prior to 1886, except a tract of three hundred and fifty-five acres in the extreme upper end of the reservoir, which it acquired in 1891 by grant to it from George H. Neale and wife, the then owners.

That said Rancho de la Nacion contains 26,631.94 acres of land and has its western boundary on San Diego bay, a navigable water of the Pacific ocean, from whence it extends eastward about seven miles, and that the patent for said rancho was duly issued by the United States Government on February 27th, 1866.

That said Jamacha rancho adjoins said Rancho de la Nacion on the east and contains two square leagues of land; that the said grant was duly confirmed by the district court of the United States for California on March 9th, 1858, and that the United States duly issued a patent conformably thereto.

That the said Sweetwater river flows westerly through said Jamacha rancho, and, pursuing the said course, passes from it into said Rancho de la Nacion, and, flowing nearly through the center of said last-named rancho for about seven miles, has its mouth therein, where it empties into San Diego bay at the western boundary of said last-named rancho.

That on the 9th day of June, 1869, Frank A. Kimball and Warren C. Kimball were and for a long time prior thereto had been the owners in fee of said National rancho, and of all and singular the bed of the said Sweetwater river, and of all the land on each side thereof and contiguous thereto in said Rancho de la Nacion
21 from the eastern boundary thereof, being also the western boundary of said Jamacha rancho, downward, along, and upon the said Sweetwater river to the place where it empties into the bay of San Diego.

That afterwards, as early as the year 1881, said company acquired title in fee to all the waters then flowing and thereafter to flow in said Sweetwater river in and through said Rancho de la Nacion, with the right to divert the same from its natural channel at any point or points in said rancho, by a regular chain of mesne grants and conveyances under a grant and conveyance of the same made by said Frank A. Kimball and Warren C. Kimball, on said 9th day of June, 1869.

That by reason of the premises the said company became the owner in fee-simple of all the water in and riparian rights on the said Sweetwater river and of the bed of said river from the highest flowage point of its reservoir, in said Jamacha rancho, down to said San Diego bay, and that it acquired such ownership prior to the year 1886, except as to that portion thereof at the extreme upper end of said reservoir, acquired from said Neale and wife in 1891, as aforesaid.

That, pursuant to the provisions of title VIII of the Civil Code of California, said company caused to be posted and recorded in Book One (1) of the Record of Water Claims for San Diego County notices each respectively of the appropriation of 5,000 inches of water of said Sweetwater river at the location of said dam; one of said notices in the month of September, 1886, recorded at page 171; one in the month of September, 1887, recorded at page 178; one in the

month of April, 1887, recorded at page 248; all in said Book One (1).

That each of said notices contained the designation of the purposes for which the said water was claimed in the words following, to wit:

"The purposes for which said undersigned claims said water are to supply for culinary and irrigation purposes the watering
22 of live stock and other domestic uses to the lands north and south of the Sweetwater river and adjacent thereto."

That in the month of August, 1888, said company in its own name posted and filed for record a notice of appropriation of 75,000 inches of continuous flow of said Sweetwater river for the purposes set forth in said notice in words following, to wit:

"The purposes for which said water is claimed *is* to divert *an* and distribute the same through pipes, flumes, ditches for the purpose of irrigation, domestic, manufacturing, and such other uses and purposes as may be practicable and expedient."

But defendant avers that at the time of the filing and recording of each of said notices of appropriation and of the commencement of the construction of said irrigation system the riparian land on said Sweetwater river and its tributaries and the beds thereof above the reservoir were substantially all in private ownership, and almost none of said riparian land or beds of the streams were public lands of the State of California or the United States.

And defendants say that in November, 1886, the said corporation commenced the construction of its dam to impound and store said water in its said reservoirs, and thereafter prosecuted work upon the same and upon its system of mains and lateral pipes for furnishing said water for use and consumption, and by February, 1888, had completed the same.

That the location of said dam is across the channel of said Sweetwater river, at a point within the boundaries of said Rancho de la Nacion, about one-fourth of a mile west from the eastern boundary thereof, and is so located that the whole reservoir, capable of being filled by the same, is on lands so acquired by said company in said Rancho de la Nacion and Jamacha rancho.

That the capacity of said reservoir is six thousand million gallons, and that the water system of said company covers and can supply about 9,000 acres of the 12,000 acres of territory there-
23 under, consisting of certain farming lands within and outside of said National City; and, in addition to supplying said 9,000 acres, can supply the domestic uses and needs of a population, when settled upon said lands within and without said National City and on village property within said city, of 20,000 persons.

And defendants admit that said company has, in acquiring the water rights, reservoir, and distributing system as aforesaid and in preparing itself to supply said water, expended up to January 1st, 1896, a considerable sum of money, but how much they have neither knowledge, information, or belief (and they deny that it is material or relevant that they should answer as to what sums of money were expended for such purposes).

And these defendants say that the right and title of said company to said reservoir and system for furnishing water therefrom to consumers for domestic, irrigation, and other purposes, and of impounding the same, and for the sale and distribution of the *waters stored by it, and for collecting rates and compensation* therefor, so acquired by it as aforesaid, are subject, nevertheless, to the water rights, easements in, and servitudes upon said reservoir and system, and to all other rights acquired by these defendants therein as aforesaid and annexed to the respective parcels of lands of these defendants.

Defendants each, except the defendants C. H. Rippey and M. L. Ward, admit that they are each the owners of tracts of land under the said water system of said land & town company, and that most of these defendants own and hold small tracts of only a few acres each, and they say that none of them owns to exceed twenty-five acres irrigated from said system, except Warren C. Kimball, who owns about seventy acres, and that each of said defendants owns his and her tract in severalty, except as follows: The defendants Edward Gulick, William Gulick, and Henry Gulick own twenty acres of land as tenants in common. The defendants
24 J. M. Howe and H. O. Howe own twenty acres of land as tenants in common. The defendants Arthur Ryan and Michael Mack own ten acres as tenants in common; and the defendants F. E. Leslie and H. P. Whitney own ten acres as tenants in common.

These defendants admit, and each for himself and herself admits, that each defendant owning land as aforesaid has become the owner of a water right to a part of the water appropriated and stored by said company necessary to irrigate his and her said land.

And they say, and each says, that said water rights owned by the defendants respectively extend not only to the irrigation of the said respective tracts of land, but also to supplying the needs of persons resident and of animals kept thereon respectively.

And they say that each of their said water rights embraces the right and easements of the service of the reservoir and distributing system of said corporation for the delivery of the water at and upon their respective lands for all of said uses by the automatic gravity pressure existing under said system, and that each such water right and easement is in freehold and is a freehold servitude imposed upon said water system for the benefit of the land to which it is appurtenant, and that all claims and demands of said company for the price or compensation therefor has been paid or otherwise satisfied by purchase or otherwise as in the bill of complaint alleged.

And these defendants further say that said water rights extend to and include the right to have said corporation maintain said system efficiently to conduct the water to and deliver the same on the premises of each of the defendants for irrigation and other uses at and for the annual rates to be deemed and accepted as the legally established rates therefor under the facts hereinafter set forth.

And defendants admit that at the times mentioned in the
25 bill of complaint the said company was furnishing them and each of them with water through its said system.

And these defendants say that of the said 12,000 acres of farming and orchard lands lying under said reservoir and within the reach of water supply therefrom the said corporation, in January, 1887, owned and for a long time prior, to wit, since the year 1869, had owned and held, for the purpose of sale, use, and profit, about seven thousand acres.

And, further answering, these defendants say that the lands of said corporation owned by it in January, 1887, as hereinbefore stated, irrigable from its said reservoir and distributing system, as so constructed, are situate in the Sweetwater valley, in Chula Vista and in National City, all within the boundaries of National ranch, in said city of San Diego; also in Otay valley, in said county, adjoining said National ranch on the south, and in the territory known as ex-Mission lands, adjoined to National City on the north, and that said lands, together with the said town lots owned by said company as aforesaid, *from* virtually one continuous tract, extending from near the base of the said Sweetwater reservoir westward to the bay of San Diego and from the Otay valley on the south to the municipal boundaries of the city of San Diego on the north and west thereof.

That the lands as owned in January, 1887, by others than the said company are in detached parcels scattered among said lands of the said company.

And they say that said lands of said corporation were, in January, 1887, entirely unsettled and in their wild and natural state, and were almost entirely arid and of but little value without water for irrigation.

That the said lands belonging to others than said company were also at said date largely unsettled and in their wild and natural state and were of the same general character with those of said company.

26 And these defendants say that the San Diego Land & Town Company acquired its said water, water rights, reservoir site, reservoir, and distributing system for the purpose of devoting the same, first, to irrigate its own lands aforesaid and to supply the needs of inhabitants of said land who should be induced to purchase said lands from it as lands under irrigation and to be settled on said lands.

And that the object of said company in acquiring and constructing said water system was to enable it to sell its said lands as irrigated lands, with the easement of the perpetual flow and use of the water necessary and useful to irrigate the same, and to supply all the beneficial uses of the people who should settle*d* upon them, annexed as appurtenants in freehold thereto, and to create the freehold servitudes upon its said water system corresponding to such easements.

And defendants aver that said water, water rights, and said water system, to the extent necessary and useful for the irrigation of the

lands of said company, became a part of said land and became merged in the estate of said company in said realty as one estate.

And they say that, subject to the foregoing purposes, the said San Diego Land & Town Company devoted and appropriated the remainder of its said water, water rights, and the capacity and service of its reservoir and whole water system to the sale, rental, and distribution of the use of water to the public.

And these defendants say that said land & town company, in part execution of its said first and primary purpose, object, and project for selling its own lands, laid out and platted its tract of lands known as Chula Vista, which consisted of about five thousand acres, in blocks of forty acres each, and bounded each such block by avenues and streets, and subdivided said blocks into lots of five acres each and laid pipes through seven avenues therein, each
27 about three miles in length and separated from each other one-fourth of a mile, and also piped said Chula Vista at right angles with said avenues at the distance of every mile in the street crossing said avenues, and by said means said company's distributing system was made sufficient to reach and serve with water each five-acre lot on said Chula Vista tract, and also reach its farming lands lying within the said city of National City, and extended pipes from its said system through said National City to serve and irrigate 390 acres of said ex-Mission lands outside and to the northward of the same, and that, in still further execution of said project, the said company laid pipes in the Sweetwater valley and elsewhere in National ranch, in the Otay valley, and in the tract known as ex-Mission, to reach and within reach of its said lands there situated.

And, further answering, these defendants say that nine-tenths of the said company's distributing pipe system aforesaid, when laid and ready for operation in February, 1888, was so laid in anticipation of future use and demand for water supply and not for any use or demand then existing, and that when laid it was, and to a great extent still is, ahead of the demands therefor, and that much thereof has laid unused.

And, further answering, the defendants say that from the time when said corporation entered upon the enterprise of constructing said water system it has at all times advertised in print and in writing subscribed by it and held its said farming and orchard lands for sale, and up to January 1st, 1896, did, as an inducement to the purchase thereof, both privately and publicly and continuously, in writing subscribed by it and otherwise, represent that the water of its said system was piped to and over said lands and lots, and was and would be supplied to purchasers thereof in abundance for irrigating the same at the rate of $3.50 per acre per annum for farming and orchard lands.

And, further answering, these defendants say that the said
28 corporation, since the early portion of the year 1887 and up to January 1st, 1896, had at all times kept its said land continuously on the market for sale, with and under said representa-

tions as to water supply thereof and as to the annual rate for the same for irrigation.

And, further answering, these defendants say that the lands of said corporation situated in the Sweetwater valley, in the Otay valley, and in the ex-Mission, consisting of about 5,700 acres, without the appurtenant water supply under said system, have at no time been worth more, in case purchasers could be found, than an average of $35.00 per acre, and that its lands in Chula Vista, comprising about 5,000 acres, as aforesaid, as so laid out and platted, without the appurtenant water supply under said system, have at no time been worth more, in case purchasers could be found, but rather less, than an average of 75.00 per acre, and that its lands, other than town lots, situate within said city of National City, comprising about 900 acres, without the appurtenant water supply under said system, have at no time, in case purchasers could be found, been worth more, but rather less, than an average of $100.00 per acre.

That by reason of said appurtenant water supply the said corporation regarded and treated the value of said lands and lots as proportionately enhanced, and that accordingly it has at all times since early in the year 1887 held its raw lands, including the annexed perpetual easement water supply from its said water system, in said Sweetwater valley, in said Otay valley, and in said ex-Mission, at an average of $250.00 per acre, and has at all times held its raw lands in Chula Vista, with the said annexed water supply, at prices ranging from $300.00 to $500.00 per acre, except that it offered and sold about six five-acre tracts of its Chula Vista lands at $150.00 per acre, as an inducement to the first few purchasers to locate thereon, and has at all times held its lands within said city of Na-
29 tional City, together with the water supply annexed, at $350.00 to $500.00 per acre, and has held its lands, where improved by it with the aid of said appurtenant water supply, outside of the value of improvements on the same basis of valuation for the land and water.

And these defendants, further answering, say that, at said prices and under said representations that the annual rate for water for irrigation was and would be $3.50 per acre, said corporation had, up to the date of the filing of the bill of complaint herein, sold to certain of the defendants and their predecessors in title, severally, parcels of said irrigated lands outside of National City aggregating about twelve hundred acres, with the freehold easement of water supply annexed as an incident and appurtenant to the land granted, and that in cases of the purchase of each such parcel of land each purchaser thereof respectively relied upon said representations of said corporation that the annual rate for water to be supplied for irrigation was and would remain not higher than $3.50 per acre, and that in each case of such parcel of land so sold said corporation, prior to making its conveyance of the same to said purchasers, connected said lands with the actual flow of water from said system, both for irrigation and domestic and other uses, for persons and animals thereon, and in respect of lands in said Chula Vista so sold by said corporation that it exacted from and imposed upon

each of said purchasers of a tract from it his obligation to erect a residence house thereon at once, to cost not less than $2,000.00.

And these defendants, further answering, say that up to December, 1892, said corporation made no express or separate grant of "water rights" as appurtenant to such of said land up to that time so sold by it to certain of these defendants, but granted the easement of the flow and use of water from its said system as an appurtenant of the land sold and granted wich such land after
30 it had been connected with the said water system and after the said flow and supply of water had been applied to irrigate the land so sold and to the use of persons living and animals kept thereon, and contracted for and received compensation for the land and appurtenant water right in a single price for both.

That after December, 1892, said corporation in all cases where it sold of its said lands did, by an express contract in writing, specifically sell to those of the defendants who purchased lands from it after that date the appurtenant water right, and that each of such contracts contained the following provisions (the description of the land and the price for the same with water being adapted to each case), to wit:

"That in consideration of the stipulation herein contained, and the payment to be made, as hereinafter specified, the party of the first part," (said corporation) "hereby agrees to sell unto the party of the second part, and the party of the second part agrees to purchase of the party of the first part, the following real estate, to wit:" (Description.) "Together with a water right to the one-acre foot of water per annum for each and every acre of said above-described real estate, to be delivered by the party of the first part through its pipes and flumes at a point — said water to be used exclusively on said real estate, and to become and be appurtenant thereto, and not to be diverted therefrom. Provided, that the party of the first part may change the place of delivery of said water, so long as the same is near the highest point of said land. For which land and water right the party of the second part agrees to pay the sum of — dollars.

"And the party of the second part further agrees and binds —self — heirs, executors and assigns, to pay the regular annual water rates allowed by law and charged by the party of the first part for the water covered by said water rights, whether said
31 water is used or not, and to pay for all water used on said land for domestic purposes, monthly, under such rules and regulations for the delivery of water to consumers as the party of the first part may from time to time make."

And these defendants say that in the character and quality of the appurtenant water rights connected with the land sold by said corporation, as aforesaid, no discrimination exists or has at any time been claimed by said corporation or has at any time been recognized by said purchasers between the lands so sold by it after the inauguration of said water system up to December, 1892, and those sold by it after that date with the express and specific provisions as hereinbefore set forth.

And these defendants, further answering, say that the title to the lands of certain of them, to the aggregate of about nine hundred acres, lying outside of said National City, was not derived from said corporation, and in respect to such lands they say that said corporation furnished water for the irrigation of so much of such land as came into cultivation up to December, 1892, without exacting a price for a water right, but voluntarily annexed the perpetual easement of the flow and use of water from said system to said lands, and voluntarily in all respects has from the beginning of its water service treated and still does treat the same as to water rights in all respects on the same footing as the lands sold by it to other of these defendants or their predecessors in interest, as hereinbefore alleged, and that from the beginning of its water service, in 1887, until now the annual water rates actually established and collected by said corporation for water furnished by it to land not sold by it have been the same as for water supplied to lands sold by it.

And defendants, further answering, say that from and after said date of December, 1892, said corporation refused to furnish water to irrigate other or further lands under said system not owned or sold by it except upon the payment of a sum in gross for the water
32 right over and above the uniform annual rate as actually established and collected from all lands under the system, or in lieu thereof of six per cent. annual interest upon its estimate of the value of such right.

That it first fixed the price of such water rights at $50.00 per acre and later raised the same to $100.00 per acre, and that after the same date of December, 1892, it furnished no water to irrigate any lands not sold by it except upon payment of the price fixed by it for a water right under a contract for the sale of such water right containing the following provisions (the filling of the blanks being adapted to each case), to wit:

"That the party of the first part (said corporation) agrees to and does hereby sell to the party of the second part a water right to one acre foot of water per acre per annum, for each and every acre of the real estate hereinafter described, to be delivered through the pipes and flumes of the party of the first part — for the sum of — dollars, payable as follows: —. Provided the party of the first part may at its option change the place of delivery of said water, so long as the same is near the highest point on the lands for which the water is delivered under and in accordance with the rules and regulations established from time to time by the party of the first part. Said water right is sold for the use of and to be appurtenant to the following-described real estate now owned by the party of the second part, in the county of San Diego, State of California, to wit: —, consisting of — acres.

"And it is expressly understood and agreed that the water right hereby sold shall belong to said described real estate and be used thereon, and not diverted therefrom or used on any other lands.

"In consideration of the foregoing stipulations and agreements, the party of the second part agrees and binds —self — heirs, exec-

utors and assigns, to pay the sums above specified promptly
33 as the sums, and each of them, falls due, and that — will in all things comply with and perform the terms and conditions of this agreement on — part to be performed, and that — and they will promptly pay all annual water rates and charges for *th* the water to which — is entitled under and by virtue of this agreement, at rates fixed by the party of the first part as allowed by law, and at the times, in the manner, and according to the rules and regulations made and adopted by the party of the first part, the annual rental for the amount of water to which the party of the second part is entitled under this contract, to be paid whether the same is used or not, and also to pay for all water used by — on said land for domestic purposes at the rates fixed by the party of the first part and allowed by law."

And that said company annexed, under said form of contract, the water rights referred to in the bill herein, which are appurtenant to about 400 acres of the lands of certain of these defendants.

And that said corporation at no time has made or claimed, and does not now make or claim, any distinction in respect of the character and quality of the water right or of the annual rates actually established or collected for irrigation between such of the said lands not purchased from it as are furnished with water for irrigation by it, whether under such special contract for water right or without.

And these defendants say that the defendant J. M. Ballou owns his water right, alleged in the complaint, by virtue of a special written contract with said corporation making such water right appurtenant to his land for a valuable consideration by him paid to said corporation and under the provisions as to rates in the words, to wit:

"Provided, that said party of the second part shall make appli-
cation in the form provided by the company, for the use of
31 the water, and use the same under the same restrictions and conditions, and to pay said party of the first part the current rate therefor, as established, for Chula Vista; provided, said restrictions and conditions are not inconsistent with the water right hereby granted to said party of the second part."

And these defendants further say that of their number the owners of the lands to the amount of about 400 acres, which lie in said ex-Mission, and which have annexed to them water rights, as in the complaint alleged, entered into a written contract with said corporation for the use and flow of said water to said lands, and that said contract contains the following provisions:

"The parties of the first part will make application for the use of the water upon the form provided by the party of the second part for that purpose, and pay for the use of the water at the current rates as may be enforced from time to time for supplying lands in National ranch, and subject to the same general rules and regulations."

And, further answering, these defendants say that on or about June 3rd, 1895, said corporation established a classification of lands which had been or which should be provided with water by its system, to take effect July 1st, 1895, and afterwards confirmed the

same to take effect January 1st, 1896, and that said classification has been adopted by the complainant receiver and is in words following, to wit:

"Tenth. For the purpose of fixing rates for irrigating acre property the lands of that character are classified as follows:

"All lands to which the easement and flow of water for irigation has been or shall be annexed by the consent or voluntary act of this company shall constitute the first class.

"All lands to which the easement and flow of water for irrigation has not been or shall not be annexed by the consent or voluntary act of this company shall constitute the second class."

35 And in respect of said second class of lands it at the same time promulgated the following, to wit:

"In addition to said annual rate for water used upon lands of said second class, there shall be paid upon the lands of said class an annual charge equal to six (6) per centum of the value of the right to said easement and flow of water for irrigation, which said value is to be taken as one hundred dollars ($100.00) per acre."

And these defendants say that the lands of each and all of the defendants fall within the first class so defined by said corporation and said receiver.

And these defendants further say that said corporation has planted and improved other considerable tracts of its said lands still owned by it, aggregating about 1,500 acres, outside of said National City and about 75 acres within said city, and has used and is using thereon water supplied from its said system as appurtenant to said land and for cultivating the same, and also holds said lands, with such appurtenant easement of water supply, for sale, and that said corporation retains the remainder of its said lands under said system, comprising about 4,000 acres, to which water has not actually been applied, at valuations not less than hereinbefore stated for raw land, with the incident and easement of water supply annexed, and has refused and at all times refuses to dispose of the same without including said water supply, except on the conditions that purchasers would pay to complainant the price for said lands so fixed by it, and to include the price of a water right or interest at six per cent. per annum on the price of such water right, at the option of the purchaser.

And they further say that in estimating the annual income
36 from water rents under its system said corporation has, from the beginning of its said water supply, treated its said lands so actually irrigated by it as being precisely on the same footing as to annual rates with the lands of each of these defendants, and has entered up upon its books the same rate per acre per annum as charg-able to said lands as that charged to the lands of defendants, and that said receiver has done and does in all things do likewise.

And they say that in the classification aforesaid made by said corporation and its receiver no discrimination is made or at any time has been made between lands of the first and second class in respect of the annual rate, and that the said additional charge of six per cent. per annum upon the value of such water right applies

only to such lands as shall receive the use and flow of water from said system for irrigation upon demand of their owners to share in that part of the said waters appropriated by said corporation to the public use in the cases where the owners shall not have paid or secured to be paid, by contract or convention with said corporation, the gross sum demanded by it for the sale and conveyance of the water right for such lands, and they say that none of the lands of these defendants now under irrigation fall within the second class.

And these defendants say that they have each accepted and concurred in and do accept and concur in the said classification of lands as made by said corporation and receiver, and that the same has become established, and that the same is just, equitable, and reasonable as between said corporation and all the land-owners under said system.

And these defendants say that the aggregate number of acres of land now under irrigation from said system, including those of these defendants, of said corporation, and of all others, does not exceed
4,300 acres, or one-half of the capacity of the reservoir and
37 distributing capacity of the main pipe lines of said corporation after allowing for the domestic uses of 20,000 persons, and that about 800 acres of said land so irrigated lie in National City.

And these defendants further say that neither of them know, and that neither of them has been informed, save by complainant's said bill and the statement of said corporation, what is the actual annual expense of operating and keeping in repair the said reservoir and water system of said company and furnishing its consumers with water, exclusive of the alleged interest of seven per centum of $300,000.00 of the bonds of said corporation referred to in said bill, but that, upon such information, they are informed and believe, and therefore allege, that the said annual expenses do not exceed the sum of $12,034.99, as stated in the bill of complaint herein.

And they aver that the "natural and necessary depreciation of its system" referred to in the bill of complaint is made good by the keeping of the same in repair, the cost of which is included in the annual charges, and they say that, as shown by the books of said corporation and its official reports, the aggregate, under the head of its accounting for "water service," "maintenance of pipe lines," "maintenance of Sweetwater dam," and "expenses" for the years ending December 31st, 1890, 1891, 1892, 1893, and 1894, were respectively $8,015.48, $13,002.46, $11,395.17, $11,410.48, and $7,850.18.

And, answering upon such information, they allege that the amounts so actually realized from the whole system for water rentals alone, exclusive of any proceeds of the sale of water rights during said year, did not fall below $25,715.00, and they say that at the same rates the amount that will be realized by said corporation from the annual rentals under said system, exclusive of any sums derived from the sale of water rights, will not, for the year ending January 1st, 1897, fall below $27,000.00; and the defendants say and each

of them says that the amount of $25,715.00 was collected as
38 water rentals for the year ending January 1, 1896, for the several purposes for which water was used from the said company's system, with the irrigation rate fixed at three and one-half dollars per acre per annum, and that the sum of twenty-seven thousand dollars is the measure of the yield for the year ending January 1st, 1897, from the said rentals, with the rate for irrigation fixed at the same annual rate of $3.50 per acre and with but two-thirds of the capacity of said system in use.

And they further say that the said amounts actually realized annually from water rents under said system are derived from sums paid in respect of the lands owned by others than the said corporation and the rentals attributed to the lands owned by said corporation actually under irrigation, and that no part thereof has at any time been derived from or attributed to the lands of said corporation, whether still owned by it or heretofore sold by it, so long as the same were not or still are not actually irrigated.

And defendants further say that they are informed by the records and official reports of said corporation, and therefore aver the fact to be, that on January 31st, 1894, the net balance of its actual receipts from water rentals, based on collections actually made from lands actually irrigated, both those sold and those never owned by the company, and sums charged to lands owned by the company actually irrigated from February, 1888, to said December 31st, 1894, accumulated in its hands to the credit of said water system, after deducting the items of "expenses," "maintenance of pipe line," and "maintenance of Sweetwater dam," was $49,699 28.

But they say that said net balance to the credit of said water company's department on said December 31st, 1894, does not include any charge, rate, or assessment to the lands of said corporation which at any time were not or that now remain unirrigated.

39 And these defendants deny that the annual expenses of said corporation to operate and maintain its water system exceed the sum of $12,034.99, as in the bill of complaint alleged.

But these defendants, further answering, say that they deny that said corporation is entitled to demand or receive from these defendants any sums whatever, by way of water rentals, in behalf of or to apply upon the said demanded income of six per cent. or any net income on the alleged cost of said water system.

And they deny that they or either of them own their said water rights in and under said water system subject to any obligation, legal or equitable, other than such as arises from the actual rates established, as aforesaid, and collected by said company, which, in case of their lands, is $3.50 per acre per annum.

And they deny that the compensation to said corporation for either of their respective water rights, easements, or servitudes aforesaid were or are still subject to regulation by any board of supervisors of this State, as provided in said act of 1885.

They aver that such of their number as have purchased their said lands, with water rights appurtenant thereto, from said corporation and such of their number as have purchased of said corpora-

tion water rights made appurtenant to their lands, not bought of the corporation, have each and all paid the full amount demanded by said corporation as the price of the perpetual easement of water supply from said company's water system by said company granted and annexed to such lands. They aver that such easements are respectively servitudes upon said company's water system and have been fully paid for, and that the owners of said lands are forever discharged and acquitted from payment of any further sum or sums to apply on the principal of or as income upon the cost or value of said water system or any debt incurred by said corporation for construction thereof or the value of their respective water rights.

40 And they allege that said company, in each of said cases where water was devoted to the public use, received satisfaction for from and parted with to each of said defendants or to his or her predecessor in interest all right to demand and collect water rentals proportioned to said lands as corresponded or related to interest or income on the cost or value of said system or to net annual receipts and profits thereon or therefrom.

And that in said respects it has at all times put all other lands to which it has voluntarily annexed said water rights upon the same footing, and that all such lands have remained on the same footing for more than five years; that said lands have in many cases changed owners while so supplied with water at the same rates and on the same footing as to water rights with the land sold by the said company with annexed water rights, as aforesaid; that the value of said water rights has for more than five years entered into the market value of said lands and has in all cases been paid for to their vendors by the present owners, these defendants, who are successors in title by mesne or immediate conveyances of the lands to which, during the former ownership, the company voluntarily annexed said perpetual easement and water rights, and that neither any such lands nor the owners of any thereof are in any event liable for any other or further water rentals than are the lands the ownership of which, with said water rights, *were* derived from said corporation.

And these defendants, further answering, say that true it is, as alleged in the bill of complaint, that said land and town company commenced to furnish water to consumers in the year 1887; but they say that its regular water service commenced in the month of February, 1888.

They further say that true it is, as alleged in the bill of complaint, that said corporation did, as early as February, 1888,

41 and as aforesaid, fix and establish and has since charged the rate of $3.50 per acre as the annual rate for irrigation and no more until January 1st, 1896.

And these defendants each say that said annual rate of $3.50 per acre is the only actual rate which has ever been established or that has ever been collected by said corporation or which has at any time been paid or assented to by the consumers under said system

from the said beginning of its water service down to the time of filing the bill of complaint herein.

That said rate so actually established and collected has during more than nine years last past been uniform as to all the lands actually irrigated under said system, and defendants say that it has been uniform and without discrimination in respect of all the lands of these defendants at all times.

And these defendants further say that they were induced to purchase, improve, and settle upon their said respective parcels of land in reliance upon the fact that said rates of $3.50 per acre per annum for irrigation under said system has during all said period of time been uniformly and actually established and collected by said corporation; and they aver that said irrigation rate has entered into the value of all the land of these defendants and is a material element of such value.

They admit that no other person or corporation is or ever has been furnishing a supply of water to said defendants and other consumers, and that there is not now nor has been any other system of water works by which said defendants can be furnished with water.

And these defendants deny that the capacity of said water system is only sufficient to supply water to not exceed seven thousand acres, together with the water demanded for domestic use, and aver that it is of sufficient capacity to supply nine thousand acres, together with domestic uses of a population of twenty thousand persons.

42 And they deny that at the rate of $3.50 per acre, if water should be demanded and used upon the whole of the lands which the system is able to supply with water, and rates are allowed in said National City equally high for domestic uses and irrigation, said company would not be able to pay its operating expenses and maintain from such rentals its plant and system. They deny that said company has been or still is under said established rates losing money every or any year. They deny that its said plant and system has been or is gradually going to decay from natural depreciation consequent upon its use in supplying consumers with water without any or sufficient resources or means provided from said rates for replacing the same. They deny that said company, if said rate of $3.50 per acre is maintained, will be compelled to furnish water to consumers at any actual or continuous loss; and they deny that if the rentals derived from said system at the rates actually established and collected, including said rate of $3.50 per acre, are fairly applied to manage, operate, and maintain the same that said system will be lost.

And these defendants deny and each of them denies that in order to pay the said company the amount of its annual expenses and an annual income of six per cent. upon the present cost and present value of its said water system it is necessary that the rates for water sold and consumed be so fixed as to realize to said company, when its system is wholly employed, the sum of $119,791.66 or any less sum in excess of $32,000.00 per annum.

And defendants aver that neither the present cost nor the present cash value of the whole of said property constituting said water system exceeds the sum of $300,000.00, and that not over one-half of the capacity of said system was on January 1st, 1896, in use, and that not over two-thirds of the capacity of said system is now in use.

And defendants deny that in order to pay the cost of operating the plant of said company and maintaining the same and
43 pay said company as much as six per cent. net annual revenue upon the present cost and cash value of its said plant and water system it is or will be necessary to charge a rate per acre per annum of not less than $7.00 for irrigation purposes or any sum in excess of $3.50 per acre per annum for irrigation purposes in connection with the rate for water for domestic use under said system actually established and collected.

They deny that $7.00 per acre per annum or any sum in excess of $3.50 per acre per annum is a reasonable rate for these defendants as consumers to pay. They aver that each of them is owner of a right and easement in freehold of the flow and use of water through the water system of said company as in the bill of complaint alleged, and that the same is appurtenant to their respective lands, and that their lands fall within the first class established by said corporation, and that from them said company is not entitled to any interest on its investment in said plant, and they aver that the sum of $3.50 per acre per annum for the use and enjoyment of said easement and maintaining and operating of said system has been actually established, as aforesaid, and is the only rate which has been collected by said corporation for the nine years last past from these defendants and their privies in the title to their said lands, and that no other rate has ever been actually established in respect of their lands or at any time collected, and that said rate is the ample and sufficient contribution of said lands for the maintenance of said works.

And these defendants aver that they and each of them respectively and their predecessors in estate, owners of the said several tracts of land now held and owned by the said defendants, have for more than five years prior to the first day of January, 1896, continuously held and enjoyed the use of the said waters upon their said lands for irrigation purposes, paying therefor the annual
44 sum of $3.50 per acre, and that such use and enjoyment has been open, notorious, continuous, adverse, and uninterrupted, and that they have thereby acquired the right to have and enjoy said water for the purpose of irrigating their said lands, paying therefor the said annual sum per acre, and that said right has become vested in them by such use under the said deeds of conveyance and representations and assurances, as aforesaid, and by the operation of section 318 of the Code of Civil Procedure of the State of California, and that they are entitled to have and use the said water from the said works, paying therefor the said sum per acre per annum and no more.

And these defendants aver that the said corporation is barred from having or maintaining any action at law or in equity to change

the character of or add to the burden of said easement or to increase the said annual payment for the use of the said water, and is estopped to assert, claim, or exercise any right to change the said annual payment.

And the said defendants admit that by the laws of the State of California the board of supervisors may, upon the petition of twenty-five inhabitants and tax-payers of the county, fix the rates of the yearly rental to be collected by any company furnishing water to consumers when the same is furnished as a public use, and that no such petition has ever been presented or rates fixed in the case of said land & town company.

That admit that said land & town company gave notice to the defendants that on January 1st, 1896, it would undertake to establish a rental of $7.00 per acre per annum for water supplied to their and each of their lands for irrigation, and that from and after said date it would undertake to require them and each of them to pay said sum for the irrigation of their and each of their lands, and they admit that complainant, after his alleged appointment as receiver and before said date, gave a similar notice.

And these defendants each say that at the date of said notices they were and for a long time prior thereto had been in the
45 continued enjoyment of their said water rights and easements and the flow of the water thereunder, and were paying and always had paid to said company $3.50 per annum for each acre irrigated by them and each of them.

And they say that said notice contained the further demand, as a condition to the refraining by said company from interfering with and shutting off the water supply of each of these defendants under their respective easements and water rights aforesaid, that the defendants each subscribe and execute an instrument upon a certain printed form designated "Application for water," which contained the following words and figures:

"NATIONAL CITY, CAL., —— —, 1896.

"To the San Diego Land & Town Company:

"The undersigned hereby applies for a permit to connect service pipes with the mains of the company and for water service under the rules and regulations of the San Diego Land & Town Company, which are expressly made the basis for the application, and which he agrees to observe for the following purposes and at the following rates for the year ending June 30th, 1896:

"No.	Monthly rate.	Annual rate.	Total.	Date.
"Family of four persons.				
"Additional persons.				
"Bath.				
"Water-closet.				
"Horses.				
"Horses.				
"Carriages.				
"Cows.				
" "				

"Lot and block property.
"Lots.
" "
" "
"Irrigated land.
46 "Acres.
" "
"Acres.
"Interest charges.
"Total annual rate for the year ending June 30, ——, which I agree to pay, quarterly in advance, at the office of the San Diego Land & Town Company.
"The water to be furnished under this application to be used on the following land or property:

"Lot. In block. ¼ sec.

"National City.
"National ranch.
"Ex-Mission.

"More fully described as follows:
"The location of the *top* is on — side of —— avenue, street,
between —— and —— avenues.
"This contract shall remain in force until the first day of next July, when it may be terminated at the request of either party, notice to be served in writing; but in case no such request is made, then the same shall continue in force for one year, thereafter, and so on from year to year until such request is made; which request, when made, shall be to terminate this contract on the following July first.
"Provided, that if the water is furnished under this application after June 30th, 1896, the same shall be paid for at the rate fixed by the proper authorities, or the rules of the company, for the year the same is furnished, and subject to the rules and regulations of the company, the same to be payable quarterly, unless otherwise provided by said rules and regulations.

"Applicant —— ——.
"SAN DIEGO LAND & TOWN CO.,
"By —— ——."

47 And these defendants admit that each of them has refused to pay said rate of $7.00 per acre, and that they do maintain that neither the said land & town company nor the complainant has any legal or equitable right to increase the amount to be paid by any of them, and that the rate of $3.50 per acre per annum actually established by the said land & town company by said contracts and conveyances, use, and practice, and which rate has at all times since the inauguration of said water system been collected and paid for the use of said water, must be and remain, and of right ought to be and remain, the established rate to be paid by these

defendants for such use as against the said attempt of said company and the complainant to raise the same to $7.00 per acre per annum.

And defendants, further answering, allege that by the constitution of the State of California, adopted in 1879, it is provided in article XIV, section 1, among other things, as follows, to wit:

"The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law."

"SECTION 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law."

And these defendants further aver that the legislature of the State of California, acting under and in pursuance of the said constitutional provisions, did, at its session held in 1885, pass an act entitled "An act to regulate and control the sale, rental, and distribution of appropriated water in this State other than in the city, city and county, or town therein, and to secure the rights of way
48 for the conveyance of such water to the places of use," which said act was duly approved by the governor of the State of California on the 12th day of March, 1885, and by the said act it was provided that all water now appropriated or that might thereafter be appropriated for irrigation, sale, rental, or distribution is a public use, and the right to collect rates or compensation for uses of such water is a franchise, and, except when so furnished by any city, city and county, or town or the inhabitants thereof, should be regulated and controlled, in the counties of this State, by the several boards of supervisors thereof in the manner prescribed in the said act, and it was, among other things, provided in the fifth section of said act that in the regulation and control of such water rates for each of such persons, companies, associations, and corporations the said board of supervisors might establish different rates at which water might and should be sold, rented, or distributed, as the case might be, and that said rates, when so fixed by such board, should be binding and conclusive for not less than one year next after their establishment and until established anew or abrogated by such board of supervisors, as thereinafter provided; and it was further provided in the same section that until such rates should be so established or after they should have been abrogated by such board of supervisors, as in the said act provided, the actual rates established and collected by each of the persons, companies, associations, and corporations then furnishing or that should thereafter appropriate waters for sale, rental, or distribution to the inhabitants of any of the counties of this State should be deemed and accepted as the legally established rates thereof.

And they aver that said rate of $3.50 per acre per annum established by said corporation, as set forth in the bill of complaint herein, is the only actual rate for irrigation which has ever been established and collected by said corporation or said receiver, and

they aver that the same is the only rate which ever has been
49 legally established or which is to be deemed or accepted as having been legally established by said corporation therefor.

And these defendants deny that any increase of the rate for such rentals is at all necessary to enable said corporation or its receiver to maintain and operate said plant and pay the proper expenses of such maintenance and operation thereof.

They admit that in order to enforce the payment of said proposed rental of $7.00 per acre per annum said complainant caused the water to be shut off from the premises of each of the said defendants until such demanded rentals should be paid, and they each deny that they or any of them threatened to commence suits in the superior court of the county of San Diego to compel complainant to turn on and furnish the water to their said lands or for damages.

They admit that their rights are the same to the extent that all are freehold easements, as aforesaid, and that the determination of the question of the right of said land & town company and of complainant to increase the rate of rental to be charged and collected will affect all of these defendants in the same way and to the same extent, except that the quantity of land owned by the several defendants is different.

And these defendants deny that all the questions involved in adjusting the rights of the parties in interest as involved in the controversies in this action can be better settled in one action.

They admit that the proposed increase in rates, if collected from all the lands irrigated under said system, including all those of defendants and all others, including those of the corporation itself, would add to the rentals collected by said company from all the said lands now under irrigation not less than $14,000.00 per annum.

But the defendants each say, relating to the jurisdiction of
50 this court of the said action against each defendant severally, that on and for a long time prior to January 1st, 1896, there was in force a rule adopted by the San Diego Land & Town Company, which was also adopted by said complainant as its receiver, as follows:

"1. All rates are payable at the company's office, and in all cases, except where the supply is taken through a meter or counter, will be collected in advance and within — (15) days of becoming due, as follows: For miscellaneous and domestic purposes, January, July, and October 1st, in quarterly payments.

"6. In case of non payment of the water rate within fifteen (15) days after becoming due the supply will be discontinued and will not be again renewed until full and satisfactory settlement of all arrearages shall be made, together with the sum of one dollar for turning on and off."

That under said rule, on January 4th, 1896, being the time of the filing of the bill of complaint herein, the demand of complainant for increase of rentals "to enforce payment" of which complainant caused the water to be shut off from the premises of each of these defendants until such demanded increase of rentals should be paid, as set forth and stated in the bill of complaint, was for the quarter

year beginning with January 1st, 1896, and no longer; that no rental or compensation of any kind had accrued or become due or payable to complainant at the filing of the bill herein except for the first quarter of said year.

That such demanded increase of rental for any quarter of the year beginning January 1st, 1896, would, in case of no defendant or defendants associated as partners, be as much as $2,000.00, but in each case very much less than that sum, and in case of the defendant having the largest number of acres of land irrigated under said system would not equal $58.00, and in case of no other as much as $35.00, and of most others not to exceed $3.75 each.

And these defendants, further answering, say that they
51 have no information, except as derived from the complainant's bill, from the solemn admission of said corporation, and from the records of the recorder's office of the county of San Diego, State of California, as to whether said corporation did borrow $300,000.00 and as to whether it is compelled to pay thereon $21,000.00 interest annually, or what portion of the said principal sum it applied to the acquisition and construction of its water system, and they deny that it is material for them to further answer any allegation with respect thereto.

And these defendants, further answering, say that they each have at all times since January 1, 1896, paid the rate or rental of $3.50 per acre per annum to the complainant, as such receiver, and are willing and offer to pay the same as long as it continues to be legally established.

And, further answering, these defendants say that the statute of the State of California of 1885 referred to in the bill of complaint and in this answer of these defendants, in so far as it purports to prohibit the said company from selling, disposing of, or alienating servitudes in freehold upon its said water system or its said property used or useful to the appropriation or furnishing of water, or to prohibit said company from contracting respecting the same, or from receiving full payment, satisfaction, or compensation therefor from any consumer willing to contract, purchase, and pay for the same, and in so far as said statute prescribes that such servitudes shall be enjoyed by the owner of the land to which the same are annexed as easements only upon the terms and conditions that such owners render net annual receipts and profits upon the value thereof in perpetuity, and in so far as said statute purports to prohibit said company and the consumers of water under it from the making of contracts by and between said company and water consumers respecting the annual receipts, profits, and income of any of said property, or to extinguish and satisfy and make acquit-
52 tance of any right of said company to such net annual receipts, profits, and income, and in so far as such statute prohibits any of the contracts in this answer set forth relating to the sale, transfer, or vesting of the flow and use of water in freehold annexed to the lands of the respective defendants herein, and in so far as it prohibits the sale, transfer, and vesting of the ownership of the water rights in the bill of complaint referred to in these defendants

respectively and from becoming annexed to their respective parcels of land, the same is unconstitutional and void as being in conflict with the XIV amendment of the Constitution of the United States, in that such statute would deprive said company and these defendants of their liberty without due process of law and would deny to them and each of them the equal protection of the laws, and as being in conflict with the declaration of rights contained in section one of the constitution of the State of California, and which said section is in words and figures following to wit:

"*Article* 1, *Declaration of Rights—Inalienable Rights.*

"SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life, liberty and property, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."

And as being in conflict with article twenty, section nine, of the constitution of the State of California, which is as follows:

"SECTION 9. No perpetuities shall be allowed, except for eleemosynary purposes."

And each defendant for himself says that his liability to pay rentals or charges of any kind for the service of said system is several and not joint, except only in the case of said defendants associated as partners, which is joint only as between such partners.

And the defendants say that the following defendants,
53 among others, are not inhabitants or residents of the State of California and are not competent to make petition to the board of supervisors, as provided in section 3 of said act of 1885, to wit:

T. M. Eaton, Charles Mohnike, the heirs of Schulenburg, deceased; E. J. Elliott, H. E. Klamer, D. S. McBean, Edwin S. Belcher, J. W. Stearns, N. J. Pillsbury, Mary D. Klamer, Arthur Ryan and Michael Mack, L. V. Wright.

And they say that the following-named defendants are public-school corporations and not tax-payers of any county of this State: Chula Vista School District, Sunnyside School District, Sweetwater School District, and for said reasons are not competent to make such petition.

And the following-named defendants, among others, are not inhabitants of said county of San Diego, to wit: Edward Gulick, William Gulick, and J. O. Rhinehart, and for said reasons are not competent to make such petition.

And said defendants, so being incompetent to petition the board of supervisors, as provided by section 3 of said act of 1885, say and all the defendants say that they have no power to compel any sufficient number of competent inhabitants who are tax-payers to join in a petition to the board of supervisors, as provided in said section 3 of said act.

And these defendants say that said statute of the State of California approved March 3rd, 1885, in so far as it assumes or purports

to authorize or empower said San Diego Land & Town Company or said receiver to increase, as is alleged in the bill of complaint, said rate of $3.50 per acre per annum heretofore actually established and collected from the defendants without the consent of the defendants and each of them, is in violation of section one of article XIV of the amendments of the Constitution of the United States, and deprives each of them of his and her property without due process of law and denies to each of them the equal protection of the law.

54 And these defendants further say that, in so far as said statute of 1885 purports to authorize or empower said land & town company or its receiver to shut off or to justify them or either of them in their act, as set forth in the bill of complaint, in shutting off the water from the lands of these defendants or either of them, or to deprive these defendants or either of them of the enjoyment of their said water rights and of their said easement of the flow and use of such water for the irrigation of their said respective tracts of land as a means of enforcing against these defendants the collection of the increase of rental demanded in the bill of complaint or any increase made without consent of these defendants of the said rate of $3.50 per acre per annum heretofore actually established and collected from these defendants, and in so far as said statute purports to permit or authorize such enforced collection without permitting these defendants to have any standing in this court to contest the reasonableness of said increase of rates, and in so far as it purports to empower this court or any court to enjoin these defendants or any of them from contesting the reasonableness of said increase of rates in any court, the same is unconstitutional and void as tending to deprive and depriving these defendants and each of them of their property without due process of law and as tending to deprive and depriving them and each of them of the equal protection of the laws, in violation of section one of the XIV amendment of the Constitution of the United States.

And these defendants humbly submit and insist that the rate of rental for irrigation of each of their said parcels of land ought not to be changed or altered from the rate of $3.50 per acre per annum, being the rate and rent actually established and collected by said San Diego Land & Town Company and said receiver, as aforesaid.

And, further answering, these defendants admit that the complainant, C. D. Lanning, was appointed receiver of all the

55 property of the said San Diego Land & Town Company of Kansas by the circuit court of the United States for the district of Massachusetts at the time and with the powers as in the bill of complaint alleged, and that said receiver took possession of said property and of the management thereof as such receiver.

And these defendants aver and each of them avers that the acts of said receiver, as set forth in the bill of complaint, in undertaking to raise the said rate of $3.50 per acre per annum for irrigation to $7.00, and in shutting off the water supply, as in the bill of complaint alleged, are and each of them is in violation of article V of the amendments to the Constitution of the United States, as acts

done under a color of authority of the United States, tending to deprive and depriving these defendants and each of them of their property without due process of law.

And these defendants, as matter of supplement to their said answer, state that the legislature of the State of California, at the session thereof held in 1897, passed an act entitled "An act to amend an act entitled 'An act to regulate and control the sale, rental, and distribution of appropriated water in this State other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the place of use,' approved March 12th, 1885, by inserting a new section therein relating to contracts for the sale, rental, and distribution of water, and the sale or rental of easements and servitudes of the right to the flow and use of water," and which said act was duly approved by the governor of the State of California on the 13th day of March, 1897, and thereupon immediately went into effect.

And defendants further aver that the addition so by the said amendment made to the said act was a section numbered 11½, and which said section is in the words following, to wit:

"SECTION 11½. Nothing in this act contained shall be con-
56 strued as prohibiting or invalidating any contract already made, or which shall be hereafter made, by or with any of the persons, companies, associations or corporations described in section two of this act, relating to the sale, rental or distribution of water or to the sale or rental of easements and servitudes of the right to the flow and use of water; nor to prohibit or interfere with the vesting of rights under any such contract."

And these defendants further aver upon information and belief that by virtue of the said provisions of the Constitution of the United States and of the State of California and under and by virtue of the act of the legislature of March 13, 1897, before mentioned, these defendants and each of them had the right to enter into the contracts with the said San Diego Land & Town Company herein set forth, and the said contracts are valid and effectual, and that the said complainant had no right to make such increased charge for the use of water as aforesaid.

And these defendants deny that any other matter or thing in the said bill of complaint contained and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true, to the knowledge or belief of them or either of them.

All which matters and things these defendants are ready to aver, prove, and maintain as this honorable court shall direct, and pray to be hence dismissed with their costs and charged in this behalf most wrongfully sustained.

JOHN S. CHAPMAN,
C. H. RIPPEY, AND
HAINES & WARD,
Solicitors for said Defendants.

STATE OF CALIFORNIA, } ss:
County of San Diego, }

D. L. Murdock, being first duly sworn, deposes and says: That I am one of the defendants named in the foregoing-entitled further answer; that I have read said further answer and know the contents thereof, and that the same is true of my own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters I believe it to be true.

D. L. MURDOCK.

Subscribed and sworn to before me this 11th day of September, A. D. 1898.

[SEAL.] DAVID C. COLLIER,
Notary Public in and for the County of San Diego, State of California.

That pursuant to the written stipulation of the parties to said action, filed September 13, 1897, an order was entered by the court on Dec. 20, 1897, *nunc pro tunc*, as of the 13th day of September, 1897, that the oath of any one of the defendants to the joint and several answers of the defendants shall be treated as the oath of all, and that the answers shall be treated as though sworn to by all.

That to the said answer so filed the said complainant, Chas. D. Lanning, receiver of said San Diego Land & Town Company of Kansas, filed, on September 22, 1897, the exceptions in words and figures as follows, to wit:

(Title of Cause.)

Exceptions Taken by said Complainant to the Answer of the said Defendants to His Bill of Complaint in This Cause.

First. For that said defendants have not according to the best of their information, knowledge, and belief set forth and discovered in their answer relevant and material matters of facts showing or tending to show that the matters alleged in the complainant's said bill of complaint are not true or in confession and avoidance thereof, but instead thereof have set forth in their said answer immaterial, irrelevant, and impertinent matter, and particularly the following allegations contained and set forth in said answer, to wit:

1. That part thereof commencing with the word "They," in line 4, page 4, of said answer, as follows:

"They deny that said corporation is or at any time was the owner of any water or water rights or reservoir or any water system, as alleged in the bill of complaint, except as hereinafter set forth, or that it is or at any time was the owner of any water or water rights or reservoir or any water system for or devoted to any purpose except as hereinafter set forth."

2. That part thereof commencing with the word "And," in line 15, page 4, of said answer, as follows:

"And they say that said dam and reservoir are entirely on land constituting part of the bed of the Sweetwater river and on riparian land on both sides of said river contiguous thereto."

3. That part thereof commencing with the word "That," in line 19, page 4, of said answer, as follows:

"That said corporation became the owner in fee-simple of the ground occupied by its dam, reservoir, pipe lines, and conduits and all the real estate occupied by its water system by private grants to it from the owners thereof holding by mesne conveyances from the owners of the Mexican grants in said San Diego county, known as the Rancho de la Nacion and the Jamacha rancho; that it acquired the title to all the said land occupied by its reservoir prior to 1886 except a tract of three hundred and fifty-five acres in the extreme upper end of the reservoir, which it acquired in 1891 by grant to it from George H. Neale and wife, the then owners.

"That said Rancho de la Nacion contains 26,631.94 acres of land and has its western boundary on San Diego bay, a navigable water of the Pacific ocean, from whence it extends eastward about seven miles, and that the patent for said rancho was duly issued by the United States Government on February 27, 1866.

59 "That said Jamacha rancho adjoins said Rancho de la Nacion on the east and contains two square leagues of land; that the said grant was duly confirmed by the district court of the United States for California on March 9, 1858, and that the United States duly issued a patent conformably thereto.

"That the said Sweetwater river flows westerly through said Jamacha rancho, and, pursuing the said course, passes from it into said Rancho de la Nac-on, and, flowing nearly through the center of said last-named rancho for about seven miles, has its mouth therein, where it empties into San Diego bay at the western boundary of said last-named rancho.

"That on the 9th day of June, 1869, Frank A. Kimball and Warren C. Kimball were, and for a long time prior thereto had been, the owners in fee of said National rancho and of all and singular the bed of the said Sweetwater river and of all the land on each side thereof and contiguous thereto in said Rancho de la Nacion from the eastern boundary thereof, being also the western boundary of said Jamacha rancho, downward, along and upon the said Sweetwater river to the place where it empties into the bay of San Diego.

"That afterwards, as early as the year 1881, said company acquired the title in fee of all the waters then flowing and thereafter to flow in said Sweetwater river in and through said Rancho de la Nacion, with the right to divert the same from its natural channel at any point or points in said rancho, by a regular chain of mesne grants and conveyances under a grant and conveyance of the same made by said Frank A. Kimball and Warren C. Kimball on said 9th day of June, 1869.

"That by reason of the premises the said company became the owner in fee-simple of all the water in and riparian rights on the said Sweetwater river and of the bed of said river from the highest

flowage point of its reservoir in said Jamacha rancho down to
60 said San Diego bay, and that it acquired such ownership prior to the year 1886, except as to that portion thereof at the extreme upper end of said reservoir acquired from said Neale and wife in 1891, as aforesaid."

4. That part thereof commencing with the word "That," in line 5, page 6, of said answer, as follows:

"That pursuant to the provisions of title VIII of the Civil Code of California said company caused to be posted and recorded in Book One (1) of the Record of Water Claims for San Diego County notices each respectively of the appropriation of 5,000 inches of water of said Sweetwater river at the location of said dam; one of said notices in the month of September, 1886, recorded at page 171; one in the month of September, 1887, recorded at page 178; one in the month of April, 1887, recorded at page 248; all in said Book One (1).

"That each of said notices contained in the designation of the purposes for which the said water was claimed *for* the words following, to wit:

"The purposes for which said undersigned claims said water are to supply for culinary and irrigation purposes, the watering of live stock, and other domestic uses to the lands north and south of the Sweetwater river and adjacent thereto.

"That in the month of August, 1888, said company in its own name posted and filed for record a notice of appropriation of 75,000 inches of continuous flow of said Sweetwater river for the purposes set forth in said notice in words following, to wit:

"The purposes for which said water is claimed *is* to divert and distribute the same through pipes, flumes, ditches for the purpose of irrigation, domestic, manufacturing, and such other uses and purposes as may be practicable and expedient.

"But defendants aver that at the time of the filing and recording of each of said notices of appropriation and of the commencement of the construction of said irrigation system the riparian land on said Sweetwater river and tributaries and the beds thereof above
61 said reservoir were substantially all in private ownership, and almost none of said riparian land or beds of the streams were public lands of the State of California or the United States."

5. That part thereof commencing with the word "That," in line 10, page 7, of said answer as follows:

"That the location of said dam is across the channel of said Sweetwater river at a point within the boundaries of said Rancho de la Nacion about one-fourth of a mile west from the eastern boundary thereof, and is so located that the whole reservoir capable of being filled by the same is on lands so acquired by said company in said Rancho de la Nacion and Jamacha rancho.

"That the capacity of said reservoir is six thousand million gallons, and that the water system of said company covers and can supply about 9,000 acres of the 12,000 acres of territory thereunder, consisting of certain farming lands within and outside of said National City; and, in addition to supplying said 9,000 acres, can supply the domestic uses and needs of a population, when settled

upon said lands within and without said National City and on village property within said city, of 20,000 persons."

6. That part thereof commencing with the word "And," in line 29, page 7, of said answer as follows:

"And they deny that it is material or relevant that they should answer as to what sums of money were expended for such purposes."

7. That part thereof commencing with the word "Defendants," in line 8, page 8, of said answer as follows:

"Defendants each, except the defendants C. H. Rippey and M. L. Ward, admit that they are each the owners of tracts of land under the said water system of said land & town company, and that most of these defendants own and hold small tracts of only a few acres each, and they say that none of them own to exceed twenty-five acres irrigated from said system, except Warren C. Kim-
62 ball, who owns about seventy acres, and that each of said defendants owns his and her tract in severalty, except as follows: The defendants Edward Gulick, William Gulick, and Henry Gulick own twenty acres of land as tenants in common, the defendants J. M. Howe and H. O. Howe own twenty acres of land as tenants in common, the defendants Arthur Ryan and Michael Mack own ten acres as tenants in common, and the defendants F. E. Leslie and H. P. Whitney own ten acres as tenants in common."

8. That part thereof commencing with the word "And," in line 1, page 9, of said answer as follows:

"And that each such water right and easement is in freehold and is a freehold servitude imposed upon said water system for the benefit of the land to which it is appurtenant, and that all claims and demands of said company for the price or compensation therefor *has* been paid or otherwise satisfied by purchase or otherwise, as in the bill of complaint alleged."

9. That part thereof commencing with the word "Under," in line 13, page 9, of said answer as follows:

"Under the facts hereinafter set forth."

10. That part thereof commencing with the word "And," in line 18, page 9, of said answer as follows:

"And these defendants say that, of the said 12,000 acres of farming and orchard lands lying under said reservoir and within the reach of water supply therefrom, the said corporation, in January, 1887, owned, and for a long time prior, to wit, since the year 1869, had owned and held, for the purpose of sale, use, and profit, about seven thousand acres.

"And, further answering, these defendants say that the lands of said corporation owned by it in January, 1887, as hereinbefore stated, irrigable from its said reservoir and distributing system, as so constructed, are situate in the Sweetwater valley, in Chula Vista, and in National City, all within the boundaries of National ranch,
63 in said city of San Diego; also in Otay valley, in said county, adjoining said National ranch on the south, and in the territory known as ex-Mission lands, adjoined to National City on the north, and that said lands, together with the said town lots owned

by said company as aforesaid, form virtually one continuous tract extending from near the base of the said Sweetwater reservoir westward to the bay of San Diego and from the Otay valley on the south to the municipal boundaries of the city of San Diego on the north and west thereof.

"That the lands, as owned in January, 1887, by others than the said company are in detached parcels scattered among said lands of the said company.

"And they say that said lands of said corporation were in January, 1887, entirely unsettled and in their wild and natural state, and were almost entirely arid and of but little value without water for irrigation.

"That the said lands belonging to others than said company were also at said date largely unsettled and in their wild and natural state, and were of the same general character with those of said company.

"And these defendants say that the said San Diego Land & Town Company acquired its said water, water rights, reservoir site, reservoir and distributing system for the purpose of devoting the same, first, to irrigate its own lands aforesaid and to supply the needs of inhabitants of said land who should be induced to purchase said lands from it as lands under irrigation and to settle on said lands.

"And that the object of said company in acquiring and constructing said water system was to enable it to sell its said lands as irrigated lands, with the easements of the perpetual flow and use of the water necessary and useful to irrigate the same, and to supply all the beneficial uses of the people who should settle upon them, annexed as appurtenants in freehold thereto, and to create the freehold servitudes upon its said water system corresponding to such easements.

64 "And defendants aver that said water, water rights, and said water system, to the extent necessary and useful for the irrigation of the lands of said company, became a part of said land and became merged in the estate of said company in said realty as one estate.

"And they say that, subject to the foregoing purposes, the said San Diego Land & Town Company devoted and appropriated the remainder of its said water, water rights, and the capacity and service of its reservoir and whole water system to the sale, rental, and distribution of the use of water to the public.

"And these defendants say that said land & town company, in part execution of its said and first primary purpose, object, and project for selling its own lands, laid out and platted its tract of lands known as Chula Vista, which consisted of about five thousand acres, in blocks of forty acres each, and bounded each such block by avenues and streets, and subdivided said blocks into lots of five acres each, and laid pipes through seven avenues therein, each about three miles in length and separated from each other one-fourth of a mile, and also pipes said Chula Vista at right angles with said avenues at the distance of every mile in the streeet crossing said avenue, and by said means said company's distributing system was

made sufficient to reach and serve with water each five-acre lot on said Chula Vista tract.

"And also reach its farming lands lying within the said city of National City, and extended pipes from its said system through said National City to serve and irrigate 390 acres of said ex-Mission lands outside and to the northward of the same, and that, in still further execution of said project, the said company laid pipes in the Sweetwater valley and elsewhere in National ranch, in the Otay valley, and in the tract known as ex-Mission, to reach and within reach of its said lands there situated.

"And, further answering, these defendants say that nine-
65 tenths of the said company's distributing-pipe system aforesaid, when laid and ready for operation in February, 1886, was so laid in anticipation of future use and demand for water supply and not for any use or demand then existing, and that when laid it was, and to a great extent still is, ahead of the demands therefor, and that much thereof has laid unused."

11. That part thereof commencing with the word "And," in line 5, page 12, of said answer as follows:

"And, further answering, the defendants say that from the time when said corporation entered upon the enterprise of constructing said water system it has at all times advertised in print and in writing subscribed by it and held its said farming and orchard lands for sale, and up to January 1st, 1896, did, as an inducement to the purchase thereof, both privately and publicly and continuously, in writing subscribed by it and otherwise, represent that the water of its said system was piped to and over said lands and lots and was and would be supplied to purchasers thereof in abundance for irrigating the same at the rate of $3.50 per acre per annum for farming and orchard lands."

12. That part thereof commencing with the word "And," in line 16, page 12, of said answer as follows:

"And, further answering, these defendants say that the said corporation since the early portion of the year 1887 and up to January 1st, 1896, had at all times kept its said lands continuously on the market for sale, with and under said representations as to water supply thereof and as to the annual rate for the same for irrigation."

13. That part thereof commencing with the word "And," in line 22, page 12, of said answer as follows:

"And, further answering, these defendants say that the lands of said corporation situated in the Sweetwater valley, in the Otay valley, and in the ex-Mission, consisting of about 5,700 acres, with-
out the appurtenant water supply under said system, have at
66 no time been worth more, in case purchasers could be found, than an average of $35.00 per acre, and that its lands in Chula Vista, comprising about 5,000 acres, as aforesaid, as so laid out and platted, without the appurtenant water supply under said system, have at no time been worth more, in case purchasers could be found, but rather less, than an average of $75.00 per acre, and that its lands other than town lots situated within said city of National City, comprising about 900 acres, without the appurtenant

water supply under said system, have at no time, in case purchasers could be found, been worth more, but rather less, than an average of $100.00 per acre.

"That by reason of said appurtenant water supply the said corporation regarded and treated the value of said lands and lots as proportionately enhanced, and that accordingly it has at all times since early in the year 1887 held its raw lands, including the annexed perpetual easement water supply from its said water system, in said Sweetwater valley, in said Otay valley, and in said ex-Mission, at an average of $250.00 per acre, and has at all times held its raw lands in Chula Vista, with the said annexed water supply, at prices ranging from $300.00 to $500.00 per acre, except that it offered and sold about six five-acre tracts of its Chula Vista lands at $150.00 per acre as an inducement to the first few purchasers to locate thereon, and has at all times held its lands within said city of National City, together with the water supply annexed, at $350.00 to $500.00 per acre, and has held its lands, where improved by it with the aid of said appurtenant water supply, outside of the value of improvements, on the same basis of valuation for the land and water."

14. That part thereof commencing with the word "And," in line 21, page 13, of said answer as follows:

"And these defendants, further answering, say that, at said prices and under said representations that the annual rate for water for irrigation was and would be $3.50 per acre, said corporation
67 had, up to the date of the filing of the bill of complaint herein, sold to certain of the defendants and their predecessors in title severally parcels of said irrigated lands outside of National City aggregating about twelve hundred acres, with the freehold easement of water supply annexed as an incident and appurtenant to the land granted, and that in cases of the purchase of each such parcel of land each purchaser thereof respectively relied upon the said representations of said corporation that the annual rate for water to be supplied for irrigation was and would remain not higher than $3.50 per acre, and that in each case of such parcel of land so sold said corporation, prior to making its conveyance of the same to purchasers, connected said lands with the actual flow of water from said system, both for irrigation and domestic and other uses for persons and animals thereon, and, in respect of lands in said Chula Vista so sold by said corporation, that it exacted from and imposed upon each of said purchasers of a tract from it his obligation to erect a residence house thereon at once to cost not less than $2,000.00."

15. That part thereof commencing with the word "And," in line 10, page 14, of said answer as follows:

"And these defendants, further answering, say that up to December, 1892, said corporation made no express or separate grant of 'water rights' as appurtenant to such of said land up to that time so sold by it to certain of these defendants, but granted the easement of the flow and use of water from its said system as an appurtenant to the land sold and granted with such land after it had

been connected with the said water system and after the said flow and supply of water had been applied to irrigate the land so sold and to the uses of persons living and animals kept thereon, and contracted for and received compensation for the land and appurtenant water right in a single price for both.

68 "That after December, 1892, said corporation, in all cases where it sold of its said lands, did, by an express contract in writing, specifically sell to those of the defendants who purchased lands from it after that date the appurtenant water right, and that each of such contracts contained the following provisions (the description of the land and the price for the same, with the water, being adapted to each case), to wit:

"That in consideration of the stipulation herein contained, and the payment to be made, as hereinafter specified, the party of the first part, (said corporation) hereby agrees to sell unto the party of the second part, and the party of the second part agrees to purchase of the party of the first part, the following real estate, to wit:" (Description) "Together with a water right to the one-acre foot of water per annum for each and every acre of said above-described real estate, to be delivered by the party of the first part through its pipes and flumes at a point — said water to be used exclusively on said real estate, to become and be appurtenant thereto, and not to be diverted therefrom. Provided, that the party of the first part may change the place of delivery of said water, so long as the same is near the highest point of land. For which land and water right the party of the second part agrees to pay the sum of — dollars.

"And the party of the second part further agrees and binds —self — heirs, executors and assigns, to pay the regular annual water rates allowed by law and charged by the party of the first part for the water covered by said water rights, whether said water is used or not, and to pay for all water used on said land for domestic purposes, monthly, under such rules and regulations for the delivery of water to consumers as the party of the first part may from time to time make.

"And these defendants say that in the character and quality of the appurtenant water rights connected with the land sold by said corporation, as aforesaid, no discrimination exists or has at

69 any time been claimed by said corporation or has at any time been recognized by said purchasers between the lands so sold by it after the inauguration of said water system up to December, 1892, and those sold by it after that date with the express and specific provisions as hereinbefore set forth."

16. That part thereof commencing with the word "And," in line 28, page 15, of said answer as follows:

"And these defendants, further answering, say that the title to the lands of certain of them, to the aggregate of about nine hundred acres, lying outside of said National City, was not derived from said corporation; and in respect of such lands they say that said corporation furnished water for the irrigation of so *many* of such land as came into cultivation up to December, 1892, without exacting a price for a water right, but voluntarily annexed the perpetual ease-

ment of the flow and use of water from said system to said lands, and voluntarily, in all respects, has from the beginning of its water service treated and still does treat the same as to water rights in all respects on the same footing as the lands sold by it to other of these defendants or their predecessors in interest, as hereinbefore alleged, and that from the beginning of its water service, in 1887, until now the annual water rates actually established and collected by said corporation for water furnished by it to land not sold by it have been the same as for water supplied to lands sold by it."

17. That part thereof commencing with the word "And," in line 14, page 16, of said answer as follows:

"And defendants, further answering, say that from and after said date of December, 1892, said corporation refused to furnish water to irrigate other or further lands under said system not owned or sold by it except upon the payment of a sum in gross for the water right over and above the uniform annual rate as actually established and collected from all lands under the system, or, in lieu thereof,
70 of six per cent. annual interest upon its estimate of the value of such right.

"That it first fixed the price of such water rights at $50.00 per acre, and later raised the same to $100.00 per acre, and that after the same date of December, 1892, it furnished no water to irrigate any lands not sold by it except upon payment of the price fixed by it for a water right under a contract for the sale of such water right containing the following provisions (the filling of the blanks being adapted to each case), to wit:

"That the party of the first part (said corporation) agrees to and does hereby sell to the party of the second part a water right to one acre foot of water per acre per annum, for each and every acre of the real estate hereinafter described, to be delivered through the pipes and flumes of the party of the first part for the sum of — dollars, payable as follows: ——; provided the party of the first part, may, at its option, change the place of delivery of said water, so long as the same is near the highest point on the lands for which the water is delivered under and in accordance with the rules and regulations established from time to time by the party of the first part. Said water right is sold for the use of and to be appurtenant to the following-described real estate now owned by the party of the second part, in the county of San Diego, State of California, to wit: ——, consisting of — acres.

"And it is expressly understood and agreed that the water right hereby sold shall belong to said described real estate and be used thereon, and not diverted therefrom or used on any other lands.

"In consideration of the foregoing stipulations and agreements, the party of the second part agrees and binds —self, — heirs, executors and assigns, to pay the sums above specified promptly as the sums, and each of them falls due, and that — will in all things comply with and perform the terms and conditions of this agreement on — part to be performed, and that — and they
71 will promptly pay all annual water rates and charges for the water to which — is entitled under and by virtue of this

agreement at rates fixed by the party of the first part as allowed by law, and at the times, in the manner, and according to the rules and regulations made and adopted by the party of the first part, the annual rental for the amount of water to which the party of the second part is entitled under this contract, to be paid whether the same is used or not, and also to pay for all water used by — on said land for domestic purposes at the rates fixed by the party of the first part and allowed by law.

"And that said company annexed under said form of contract the water rights referred to in the bill herein, which are appurtenant to about 400 acres of the lands of certain of these defendants.

"And that said corporation at no time has made or claimed and does not now make or claim any distinction in respect of the character and quality of the water right or of the annual rates actually established or collected for irrigation between such of the said lands not purchased from it as are furnished with water for irrigation by it, whether under such special contract for water right or without.

"And these defendants say that the defendant J. M. Ballou owns his water right, alleged in the complaint, by virtue of a special written contract with said corporation making such water right appurtenant to his land for a valuable consideration by him paid to said corporation and under the provisions as to rates in the words, to wit:

"'Provided, that said party of the second part shall make application in the form provided by the company, for the use of the water, and use the same under the same restrictions and conditions, and to pay said party of the first part the current rate therefor, as established for Chula Vista; provided, said restrictions and
72 conditions are not inconsistent with the water right hereby granted to said party of the second part.'

"And these defendants further say that of their number the owners of the lands to the amount of about 400 acres, which lie in said ex-Mission and which have annexed to them water rights, as in the complaint alleged, entered into a written contract with said corporation for the use and flow of said water to said lands, and that said contract contains the following provisions:

"'The parties of the first part will make application for the use of the water upon the form provided by the party of the second part for that purpose, and pay for the use of the water at the current rates as may be enforced from time to time for supplying lands in National ranch, and subject to the same general rules and regulations.'"

18. That part thereof commencing with the word "And," in line 2 of page 19 of said answer, as follows:

"And, further answering, these defendants say that on or about June 3rd, 1895, said corporation established a classification of lands which has been or which should be provided with water by its system to take effect July 1st, 1895, and afterwards confirmed the same to take effect January 1st, 1896, and that said classification

has been adopted by the complainant receiver and is in words following, to wit:

"Tenth. For the purpose of fixing rates for irrigating acre property, the lands of that character are classified as follows:

"'All lands to which the easement and flow of water for irrigation has been or shall be annexed by the consent or voluntary act of this company shall constitute the first class.

"'All lands to which the easement and flow of water for irrigation has not been or shall not be annexed by the consent or voluntary act of this company shall constitute the second class.'

"And in respect of said second class of lands it at the same time promulgated the following, to wit:

"'In addition to said annual rate for water used upon
73 lands of said second class there shall be paid upon the lands of said class an annual charge equal to six (6) per centum of the value of the right to said easement and flow of water for irrigation; which said value is to be taken as one hundred dollars ($100.00) per acre.'

"And these defendants say that the lands of each and all of the defendants fall within the first class so defined by said corporation and said receiver."

19. That part thereof commencing with the word "And," in line 28 of page 19 of said answer, as follows:

"And these defendants further say that said corporation has planted and improved other considerable tracts of its said lands still owned by it, aggregating about 1,500 acres outside of said National City and about 75 acres within said city, and has used and is using thereon water supplied from its said system as appurtenant to said land and for cultivating the same, and also holds said lands, with such appurtenant easement of water supply, for sale, and that said corporation retains the remainder of its said lands under said system—comprising about 4,000 acres, to which water has not actually been applied—at valuation not less than hereinbefore stated for raw land, with the incident and easement of water supply annexed, and has refused and at all times refuses to dispose of the same without including said water supply, except on the conditions that purchasers would pay to complainant the price for said lands so fixed by it, and to include the price of a water right or interest at six per cent. per annum on the price of such water right, at the option of the purchaser."

20. That part thereof commencing with the word "And," in line 21 of page 20 of said answer, as follows:

"And they say that in the classifications aforesaid made by said corporation and its receiver no discrimination is made or at any time has been made between lands of the first and second
74 class in respect of the annual rate, and that the said additional charge of six per cent. per annum upon the value of such water right applies only to such lands as shall receive the use and flow of water from said system for irrigation upon demand of their owners to share in that part of the said waters appropriated by said corporation to the public use in the cases where the owners

shall not have paid or secured to be paid, by contract or convention with said corporation, the gross sum demanded by it for the sale and conveyance of the water right for such lands, and they say that none of the lands of these defendants now under irrigation fall within the second class.

"And these defendants say that they have each accepted and concurred in and do accept and concur in the said classification of lands as made by said corporation and receiver, and that the same has become established, and that the same is just, equitable, and reasonable as between said corporation and all the land-owners under said system."

21. That part thereof commencing with the word "And," in line 9 of page 21 of said answer, as follows:

"And these defendants say that the aggregate number of acres of land now under irrigation from said system, including those of these defendants of said corporation and of all others, does not exceed 4,300 acres or one-half of the capacity of the reservoir and distributing capacity of the main pipe lines of said corporation after allowing for the domestic uses of 20,000 persons, and that about 800 acres of said land so irrigated lie in National City.

"And these defendants further say that neither of them know, and that neither of them has been informed, save by complainant's said bill and the statements of said corporation, what is the actual annual expense of operating and keeping in repair the said reservoir and water system of said company and furnishing its consumers with water, exclusive of the alleged interest of seven per centum of $300,000.00 of the bonds of said corporation re-
75 ferred to in said bill, but that upon such information they are informed and believe, and therefore allege, that the said annual expenses do not exceed the sum of $12,034.99, as stated in the bill of complaint herein.

"And they aver that the 'natural and necessary depreciation of its system' referred to in the bill of complaint is made good by the keeping of the same in repair, the cost of which is included in the annual charges, and they say that, as shown by the books of said corporation and its official reports, the aggregate, under the head of its accounting for 'water service,' 'maintenance of pipe lines,' 'maintenance of Sweetwater dam,' and 'expenses' for the years ending December 31st, 1890, 1891, 1892, 1893, and 1894, were respectively $8,015.48, $13,002.46, $11,395.17, $11,410.48, and $7,850.18.

"And, answering upon such information, they allege that the amounts so actually realized from the whole system for water rentals alone, exclusive of any proceeds of the sale of water rights during said year, did not fall below $25,715.00, and they say that at the same rates the amount that will be realized by said corporation from the annual rentals under said system, exclusive of any sums derived from the sale of water rights, will not, for the year ending January 1st, 1897, fall below $27,000.00; and the defendants say and each of them says that the amount of $25,715.00 was collected as water rentals for the year ending January 1st, 1896, for the several purposes for

which water was used from the said company's system, with the irrigation rate fixed at three and one-half dollars per acre per annum, and that the sum of twenty-seven thousand dollars is the measure of the yield for the year ending January 1st, 1897, from the said rentals, with the rate for irrigation fixed at the same annual rate of $3.50 per acre, and with but two-thirds of the capacity of said system in use.

"And they further say that the said amounts actually realized annually from water rents under said system are derived
76 from sums paid in respect of the lands owned by others than the said corporation and the rentals attributed to the lands owned by said corporation actually under irrigation, and that no part thereof has at any time been derived from or attributed to the lands of said corporation, whether still owned by it or heretofore sold by it, so long as the same were not or still are not actually irrigated."

22. That part thereof commencing with the word "And," in line 30, page 22, of said answer, as follows:

"And defendants further say that they are informed by the records and official reports of said corporation, and therefore aver the fact to be, that on January 31st, 1894, the net balance of its actual receipts from water rentals, based on collections actually made from lands actually irrigated, both those sold and those never owned by the company, and sums charged to lands owned by the company actually irrigated from February, 1888, to said December 31st, 1894, accumulated in its hands to the credit of said water system, after deducting the items of 'expenses,' 'maintenance of pipe line,' and 'maintenance of Sweetwater dam,' was $49,699.28.

"But they say that said net balance to the credit of said water company's department on said December 31st, 1894, does not include any charge, rate, or assessment to the lands of said corporation which at any time were not or that now remain unirrigated."

23. That part thereof commencing with the word "But," in line 15, page 23, of said said answer, as follows:

"But these defendants, further answering, say that they deny that said corporation is entitled to demand or receive from these defendants any sums whatever by way of water rentals in behalf of or to apply upon the said demanded income of six per cent. or any net income on the alleged cost of said water system.

"And they deny that they or either of them own their said water rights in and under said water system, subject to any obliga-
77 tion, legal or equitable, other than such as arises from the actual rates established as aforesaid and collected by said company, which in case of their lands is $3.50 per acre per annum.

"And they deny that the compensation to said corporation for either of their respective water rights, easements, or servitudes aforesaid were or are still subject to regulation by any board of supervisors of this State, as provided by said act of 1885."

24. That part thereof commencing with the word "They," in line 29, page 23, of said answer, as follows:

"They aver that such of their number as have purchased their

said lands, with water rights appurtenant thereto, from said corporation and such of their number as have purchased of said corporation water rights made appurtenant to their lands not bought of the corporation have each and all paid the full amount demanded by said corporation as the price of the perpetual easement of water supply from said company's water system by said company granted and annexed to such lands. They aver that such easements are respectively servitudes upon said company's water system and have been fully paid for, and that the owners of said lands are forever discharged and acquitted from payment of any further sum or sums to apply on the principal of or as income upon the cost or value of said water system or any debt incurred by said corporation for construction thereof or the value of their respective water rights.

"And they allege that said company, in each of said cases where water was devoted to the public use, received satisfaction for, from, and parted with to each of said defendants or to his or her predecessor in interest all right to demand and collect water rentals proportioned to said lands as corresponded or related to interest or income on the cost or value of said system or to net annual receipts and profits thereon or therefrom.

78 "And that in said respects it has at all times put all other lands to which it has voluntarily annexed said water rights upon the same footing, and that all such lands have remained on the same footing for more than five years; that said lands have in many cases changed owners while so supplied with water at the same rates and on the same footing as to water rights with the land sold by the said company with annexed water rights aforesaid; that the value of said water rights has for more than five years entered into the market value of said lands, and has in all cases been paid for to their vendors by the present owners, these defendants, who are successors in title by mesne or immediate conveyances of the lands to which during the former ownership the company voluntarily annexed said perpetual easement and water rights, and that neither any such lands nor the owners thereof are in any event liable for any other or further water rentals than are the lands the ownership of which, with said water rights, were derived from said corporation."

25. That part thereof commencing with the word "And," in line 13 of page 25 of said answer, as follows:

"And these defendants each say that said annual rate of $3.50 per acre is the only actual rate which has ever been established, or that has ever been collected by said corporation, or which has at any time been paid or assented to by the consumers under said system from the said beginning of its water service down to the time of filing the bill of complaint herein.

"That said rate so actually established and collected has during more than nine years last past been uniform as to all the lands actually irrigated under said system, and defendants say that it has been uniform and without discrimination in respect of all the lands of these defendants at all times.

"And these defendants further say that they were induced to pur-

chase, improve, and settle upon their said respective parcels
79 of land in reliance upon the fact that said rates of $3.50 per acre per annum for irrigation under said system has during all said period of time been uniformly and actually established and collected by said corporation, and they aver that said irrigation rate has entered into the value of all the land of these defendants and is a material element of such value.

"They admit that no other person or corporation is or ever has been furnishing a supply of water to said defendants and other consumers, and that there is not now, nor has been, any other system of water works by which said defendants can be furnished with water."

26. That part thereof commencing with the word "And," in line 4, page 26, of said answer, as follows:

"And these defendants deny that the capacity of said water system is only sufficient to supply water to not exceed seven thousand acres, together with the domestic uses of a population of twenty thousand persons."

27. That part thereof commencing with the word "And," in line 10, page 26, of said answer, as follows:

"And they deny that at the rate of $3.50 per acre, if water should be demanded and used upon the whole of the lands which the system is able to supply with water, and rates are allowed in said National City equally high for domestic uses and irrigation, said company would not be able to pay its operating expenses and maintain, from such rentals, its plant and system; they deny that said company has been, or still is, under said established rates, losing money every or any year; they deny that its said plant and system has been, or is, gradually going to decay from natural depreciation consequent upon its use in supplying consumers with water, without any or sufficient resources or means provided for said rates for replacing the same; they deny that said company, if said rate of $3.50 per acre is maintained, will be compelled to furnish
80 water to consumers at any actual or continuous loss; and they deny that if the rentals derived from said system, at the rates actually established and collected, including said rate of $3.50 per acre, are fairly applied to manage, operate, and maintain the same, that said system will be lost."

28. That part thereof commencing with the word "They," in line 18 of page 27 of said answer, as follows:

"They deny that $7.00 per acre per annum, or any sum in excess of $3.50 per acre per annum, is a reasonable rate for these defendants, as consumers, to pay; they aver that each of them is owner of a right and easement in freehold of the flow and use of water through the water system of said company, as in the bill of complaint alleged, and that the same is appurtenant to their respective lands, and that their lands fall within the first class established by said corporation; and that from them said company is not entitled to any interest on its investments in said plant; and they aver, that the sum of $3.50 per acre per annum for the use and enjoyment of said easement and the maintaining and operating of

said system has been actually established as aforesaid, and is the only rate which has been collected by said corporation for the nine years last past from these defendants and their privies in the title to their said lands, and that no other rate has ever been actually established in respect of their lands, or at any time collected; and that said rate is the ample and sufficient contribution of said lands for the maintenance of said works."

29. That part thereof commencing with the word "And," in line 4 of page 28 of said answer, as follows:

"And these defendants aver that they and each of them, respectively, and their predecessors in estate, owners of the said several tracts of land now held and owned by the said defendants, have for more than five years prior to the first day of January, 1896,
81 continuously held and enjoyed the use of the said waters upon their said lands for irrigation purposes, paying therefor the annual sum of $3.50 per acre, and that such use and enjoyment has been open, notorious, continuous, adverse, and uninterrupted, and that they have thereby acquired the right to have and enjoy said water for the purpose of irrigating their said lands, paying therefor the said annual sum per acre, and that said right has become vested in them by such use under the said deeds of conveyance and representations and assurances, as aforesaid, and by the operation of section 318 of the Code of Civil Procedure of the State of California, and that they are entitled to have and use the said water from the said works, paying therefor the said sum per acre per annum, and no more."

30. That part thereof commencing with the word "And," in line 20, page 28, of said answer as follows:

"And these defendants aver that the said corporation is barred from having or maintaining any action at law or in equity to change the character of or add to the burden of said easement or to increase the said annual payment for the use of the said water, and is estopped to assert, claim, or exercise any right to change the said annual payment."

31. That part thereof commencing with the word "And," in line 15 of page 29 of said answer, as follows:

"And they say that said notice contained the further demand, as a condition to the refraining by said company from interfering with and shutting off the water supply of each of these defendants under their respective easements and water rights aforesaid, that the defendants each subscribe and execute an instrument upon a certain printed form designated 'Application for water,' which contained the following words and figures:

'NATIONAL CITY, CAL., —— —, 1896.

To the San Diego Land & Town Company:

82 The undersigned hereby applies for a permit to connect service pipes with the mains of the company and for water service under the rules and regulations of the San Diego Land & Town Company, which are expressly made the basis for the appli-

cation and which he agrees to observe for the following purposes and at the following rates for the year ending June 30, 1896.

No.	Monthly rate.	Annual rate.	Total.	Date.
Family of four persons.				
Additional persons.				
Bath.				
Water-closet.				
Horses.				
Horses.				
Carriages.				
Cows.				
"				
Lot and block property.				
Lots.				
"				
"				
Irrigated land.				
Acres.				
"				
"				
Interest charges.				

Total annual rate for the year ending June 30, ——, which I agree to pay, quarterly in advance, at the office of the San Diego Land and Town Co.

The water to be furnished under this application to be used on the following land or property:

Lot.	In block.	¼ sec.
National City.		
National ranch.		
Ex-Mission.		

83 More fully described as follows:

The location of the *top* is on — side of —— avenue, street, between —— and —— avenues.

This contract shall remain in force until the first day of next July, when it may be terminated at the request of either party notice to be served in writing; but in case no such request is made then the same shall continue in force for one year, thereafter, and so on from year to year until such request is made; which request when made, shall be to terminate this contract on the following July first.

Provided, that if the water is furnished under this application after June 30th, 1896, the same shall be paid for at the rate fixed by the proper authorities, or the rules of the company, for the year the same is furnished, and subject to the rules and regulations of the company, the same to be payable quarterly, unless otherwise provided by said rules and regulations.

Applicant —— ——.

SAN DIEGO LAND & TOWN CO.,

By —— ——.'"

32. That part thereof commencing with the word "And," in line 9 of page 33 of said answer, as follows:

"And they aver that said rate of $3.50 per acre per annum established by said corporation, as set forth in the bill of complaint herein, is the only actual rate for irrigation which has ever been established and collected by said corporation or said receiver, and they aver that the same is the only rate which ever has been legally established or which is to be deemed or accepted as having been legally established by said corporation therefor.

"And these defendants deny that any increase of the rate for such rentals is at all necessary to enable said corporation or its receiver to maintain and operate said plant and pay the proper ex-
84 penses of such maintenance and operation thereof."

33. That part thereof commencing with the word "They," in line 28 of page 33 of said answer, as follows:

"They admit that their rights are the same to the extent that all are freehold easements, as aforesaid, and that the determination of the question of the right of said land & town company and of complainant to increase the rate of rental to be charged and collected will affect all of these defendants in the same way and to the same extent, except that the quantity of land owned by the several defendants is different."

34. That part thereof commencing with the word "But," in line 12 of page 34 of said answer, as follows:

"But the defendants each say, relating to the jurisdiction of this court of the said action against each defendant severally, that on and for a long time prior to January 1st, 1896, there was in force a rule adopted by the San Diego Land & Town Company, which was also adopted by said complainant as its receiver, as follows:

"'1. All rates are payable at the company's office, and in all cases, except where the supply is taken through a meter or counter, will be collected in advance and within — (15) days of becoming due, as follows: For miscellaneous and domestic purposes, January, July, and October 1st, in quarterly payments.

"'6. In case of non payment of the water rate within fifteen (15) days after becoming due the supply will be discontinued and will not be again renewed until full and satisfactory settlement of all arrearages shall be made, together with the sum of one dollar for turning on and off.'

"That under said rule, on January 4th, 1896, being the time of the filing of the bill of complaint herein, the demand of complainant for increase of rentals 'to enforce the payment' of which complainant caused the water to be shut off from the premises of each of
85 these defendants until such demanded increase of rentals should be paid, as set forth and stated in the bill of complaint, was for the quarter year beginning with January 1st, 1896, and no longer; that no rental or compensation of any kind had accrued or become due or payable to complainant at the filing of the bill herein except for the said first quarter of said year.

"That such demanded increase of rental for any quarter of the year beginning January 1st, 1896, would, in case of no defendant or

defendants associated as partners, be as much as $2,000.00, but in each case very much less than that sum, and in case of the defendant having the largest number of acres of land irrigated under said system would not equal $58.00, and in case of no other as much as $35.00, and of most others not to exceed $3.75 each."

35. That part thereof commencing with the word "And," in line 13, page 35, of said answer as follows:

"And these defendants, further answering, say that they have no information, except as derived from the complainant's bill, from the solemn admission of said corporation, and from the records of the recorder's office of the county of San Diego, State of California, as to whether said corporation did borrow $300,000.00 and as to whether it is compelled *by* pay thereon $21,000.00 interest annually, or what portion of the said principal sum it applied to the acquisition and construction of its water system, and they deny that it is material for them to further answer any allegation with respect thereto."

36. That part thereof commencing with the word "And," in line 23 of page 35 of said answer, as follows:

"And these defendants, further answering, say that they each have at all times since January 1st, 1896, paid the rate or rental of $3 50 per acre per annum to the complainant, as such receiver, and are willing and offer to pay the same as long as it continues to be legally established."

86 37. That part thereof commencing with the word "And," in line 28 of page 35 of said answer, as follows:

"And, further answering, these defendants say that the statute of the State of California of 1885 referred to in the bill of complaint and in this answer of these defendants, in so far as it purports to prohibit the said company from selling, disposing of, or alienating servitudes in freehold upon its said water system or its said property used or useful to the appropriation or furnishing of water, or to prohibit said company from contracting respecting the same, or from receiving full payment, satisfaction, or compensation therefor from any consumer willing to contract, purchase, and pay for the same, and in so far as said statute prescribes that such servitudes shall be enjoyed by the owner of the land to which the same are annexed as easements only upon the terms and conditions that such owners render net annual receipts and profits upon the value thereof in perpetuity, and in so far as said statute purports to prohibit said company and the consumers of water under it from the making of contracts by and between said company and water consumers respecting the annual receipts, profits, and income of any of said property, or to extinguish and satisfy and make acquittance of any right of said company to such net annual receipts, profits, and income, and in so far as such statute prohibits any of the contracts in this answer set forth relating to the sale, transfer, or vesting of the flow and use of water in freehold annexed to the lan[illegible] f the respective defendants herein, and in so far as it prohibits [illegible] sale, transfer, and vesting of the ownership of the water rig[illegible]s in the bill of complaint referred to in these defendants respectively and

from becoming annexed to their respective parcels of land, the same is unconstitutional and void as being in conflict with the XIV amendment of the Constitution of the United States, in that
87 such statute would deprive said company and these defendants of their liberty without due process of law and would deny them and each of them the equal protection of the laws, and as being in conflict with the declaration of rights contained in section one of the constitution of the State of California, and which said section is in words and figures following to wit:

"'*Article* 1, *Declaration of Rights—Inalienable Rights.*

"'SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life, liberty and property, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.'

"And as being in conflict with article twenty, section nine, of the constitution of the State of California, which is as follows:

"'SECTION 9. No perpetuities shall be allowed, except for elesmosynary purposes.'"

38. That part thereof commencing with the word "And," in line 7 of page 37 of said answer, as follows:

"And each defendant for himself says that his liability to pay rentals or charges of any kind for the service of said system is several and not joint, except only in the case of said defendants associated as partners, which is joint only as between such partners.

"And the defendants say that the following defendants, among others, are not inhabitants or residents of the State of California and are not competent to make petition to the board of supervisors, as provided in section 3 of said act of 1885, to wit:

"T. M. Eaton, Charles Mohnike, the heirs of Schulenburg, deceased; E. J. Elliott, H. E. Klamer, D. S. McBean, Edwin S. Belcher, J. W. Stearns, N. J. Pillsbury, Mary D. Klamer, Arthur Ryan and Michael Mack, L. V. Wright.

"And they say that the following-named defendants are
88 public-school corporations and not tax-payers of any county of this State:

Chula Vista School District, Sunnyside School District, Sweetwater School District, and for said reasons are not competent to make such petition.

"And the following-named defendants, among others, are not inhabitants of said county of San Diego, to wit: Edward Gulick, William Gulick, and J. O. Rhinehart, and for said reasons are not competent to make such petition.

"And said defendants, so being incompetent to petition the board of supervisors, as provided by section 3 of said act of 1885, say and all the defendants say that they have no power to compel any sufficient number of competent inhabitants who are tax-payers to join in a petition to the board of supervisors, as provided in said section 3 of said act."

39. That part thereof commencing with the word "And," in line 3 of page 38 of said answer, as follows:

"And these defendants say that said statute of the State of California approved March 3rd, 1885, in so far as it assumes or purports to authorize or empower said San Diego Land & Town Company or said receiver to increase, as is alleged in the bill of complaint, said rate of $3.50 per acre per annum heretofore actually established and collected from the defendants without the consent of the defendants and each of them, is in violation of section one of article XIV of the amendments of the Constitution of the United States, and deprives each of them of his and her property without due process of law and denies to each of them the equal protection of the law."

40. That part thereof commencing with the word "And," in line 14 of page 38 of said answer, as follows:

"And these defendants further say that, in so far as said statute of 1885 purports to authorize or empower said land & town company or its receiver to shut off or to justify them or either of them in their act, as set forth in the bill of complaint, in shutting off the water from the lands of these defendants or either of them, or to deprive these defendants or either of them of the enjoyment of their said water rights and of their said easements of the flow and use of such water for the irrigation of their said respective tracts of land as a means of enforcing against these defendants the collection of the increase of rental demanded in the bill of complaint or any increase made without consent of these defendants of the said rate of $3.50 per acre per annum heretofore actually established and collected from these defendants, and in so far as said statute purports to permit or authorize such enforced collection without permitting these defendants to have any standing in this court to contest the reasonableness of said increase of rates, and in so far as it purports to empower this court or any court to enjoin these defendants or any of them from contesting the reasonableness of said increase of rates in any court, the same is unconstitutional and void as tending to deprive and depriving these defendants and each of them of their property without due process of law, and as tending to deprive and depriving them and each of them of the equal protection of the laws is in violation of section one of the XIV amendment of the Constitution of the United States."

89

41. That part thereof commencing with the word "And," in line 7 of page 40 of said answer, as follows:

"And these defendants humbly submit and insist that the rate of rental for irrigation of each of their said parcels of land ought not to be changed or altered from the rate of $3.50 per acre per annum, being the rate and rental actually established and collected by said San Diego Land & Town Company and said receiver, as aforesaid."

42. That part thereof commencing with the word "And," in line 19 of page 40 of said answer, as follows:

"And these defendants aver and each of them avers that the acts of said receiver, as set forth in the bill of complaint,

90

in undertaking to raise the said rate of $3.50 per acre per annum for irrigation to $7.00, and in shutting off the water supply, as in the bill of complaint alleged, are and each of them is in violation of article V of the amendments of the Constitution of the United States, as acts done under a color of authority of the United States, tending to deprive and depriving these defendants and each of them of their property without due process of law."

43. That part thereof commencing with the word "And," in line 28 of page 40 of said answer, as follows:

"And these defendants, as matter of supplement to their said answer, state that the legislature of the State of California, at the session thereof held in 1897, passed an act entitled 'An act to amend an act entitled "An act to regulate and control the sale, rental, and distribution of appropriated water in this State other than in city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the place of use," approved March 12th, 1885, by inserting a new section therein relating to contracts for the sale, rental, and distribution of water, and the sale or rental of easements and servitudes of the right to the flow and use of water,' and which said act was duly approved by the governor of the State of California on the 13th day of March, 1897, and thereupon immediately went into effect.

"And defendants further aver that the addition so by the said amendment made to the said act was a section numbered 11½, and which said section is in the words following, to wit:

"'SECTION 11½. Nothing in this act contained shall be construed as prohibiting or invalidating any contract already made, or which shall be hereafter made, by or with any of the persons, com-
91 panies, associations or corporations described in section two of this act, relating to the sale, rental or distribution of water or to the sale or rental of easements and servitudes of the right to the flow and use of water; nor to prohibit or interfere with the vesting of rights under any such contract.'"

44. That part thereof commencing with the word "And," in line 20 of page 41 of said answer, as follows:

"And these defendants further aver upon information and belief that by virtue of the said provisions of the Constitution of the United States and of the State of California and under and by virtue of the act of the legislature of March 13, 1897, before mentioned, these defendants and each of them had the right to enter into the contracts with the said San Diego Land & Town Company herein set forth, and the said contracts are valid and effectual, and that the said complainant had no right to make such increased charge for the use of water as aforesaid."

Second. That the defendants by their said answer aver and claim that they have by purchasing lands from the said San Diego Land and Town Company and by the purchase of water rights from said company returned to it a part of its principal invested in its said water works, and that therefore they should not be required to pay rates upon a basis of allowing to said company any interest on the amount of principal so advanced or returned to it, but said answer

is evasive and uncertain, for that it does not show which, if any, of said defendants have so paid or advanced any of the said principal or how much thereof, if any, has been paid or returned to said company by all of said defendants.

Third. That it is admitted by said answer that the actual and just cost of the water works and system of said San Diego Land and Town Company is $750,000.00, and the law of the State of California allows said company as a reasonable return on said investment the sum of not less than six nor more than ten per
92 cent. not on the said value of said plant and system, and it affirmatively appears from said answer that the annual rental of $7.00 per acre per annum will not and cannot realize to said company said sum of six per cent. net per annum allowed it by law.

Fourth. That with respect to all of the matters and things in said answer set forth, other than the allegations hereinabove set forth as irrelevant and impertinent, the denials and averments contained in said answer are evasive, imperfect and insufficient, and fail, either separately or as a whole, to show that the matters and things set forth in the bill of complaint herein are not true.

Fifth. That it appears affirmatively from the answer of the defendants that the complainant has legally established and is entitled to collect a water rental of $7.00 per acre per annum for the irrigation of the lands of the defendants and each of them respectively, and that it is entitled to collect said amount as alleged in the bill of complaint herein unless said rate is unreasonable; and it is further shown and appears from said answer that the defendants have no standing in this court to contest the reasonableness of said rates, but that their remedy, if any they have, is to apply to the board of supervisors of the county in which their said land is situated to fix and establish said rates.

Sixth. That the said answer shows on its face that the complainant is legally and equitably entitled to charge and collect the rate of $7.00 per acre for the irrigation of the lands of the defendants, and that said rate is reasonable and just.

In all which particulars the complainant is advised that the answer of the defendants is altogether evasive, imperfect, insufficient, and impertinent.

Wherefore said complainant doth except thereto and prays that the defendants may be compelled to amend the same and put
93 in a full and sufficient answer to the complainant's bill.

WORKS & WORKS,
Solicitors for Complainant.

That on the 16th day of November, 1897, the complainant, Charles D. Lanning, receiver, served and filed the following notice of motion:

"(Title of Court and Cause)

"The defendants are hereby notified that on Monday, the 22nd day of November, 1897, the complainant, Charles D. Lanning, receiver of the San Diego Land & Town Company, will move the court

for the discharge of the said Charles D. Lanning as such receiver and will, at the same time and place, move the court that the San Diego Land & Town Company of Maine be substituted as complainant in said suit in lieu of the complainant above named.

Said motion will be made at the court-room of said court, in the post-office building, in the city of Los Angeles, State of California, and will be made on the ground that all of the property mentioned and described in the bill of complaint filed herein has, under and by virtue of a decree of this court, been sold by said receiver to the said San Diego Land & Town Company of Maine and the proceeds of such sale received by said receiver, and that said receivership has been fully settled and closed, and that the said San Diego Land & Town Company of Maine has acquired all of the right, title, and interest of the said San Diego Land & Town Company in and to all of said property and is now the only party interested in the further litigation of the questions involved in this suit.

Said motion will be based upon the pleadings, minutes, and proceedings of the court in said cause.

WORKS & WORKS,
Solicitors for Complainant."

94 That on the 22nd day of November, 1897, said court made and entered the following order, to wit:

"CHARLES D. LANNING, Receiver, Complainant,
vs.
H. C. OSBORNE ET AL., Defendants. } No. 671.

"This cause coming on for hearing at this time on a motion of complainant for substitution of plaintiff, J. D. Works, Esq., of counsel, appearing as solicitor for complainant; John S. Chapman, Esq., of counsel, appearing as solicitor for defendants, is called, and said motion having been argued by respective counsel, it is ordered that the same be submitted to the court for its consideration and decision. It is further ordered that the exceptions to the answer hereinbefore submitted in this case be now sustained; to which ruling of the court defendants, by John S. Chapman, Esq., their counsel, except."

That on the 6th day of December, 1897, the court made and entered in said cause the following order:

"CHARLES D. LANNING, Receiver of the San Diego Land & Town Company, a Corporation, Complainant,
vs.
H. C. OSBORN ET AL., Defendants. } No. 671.

"This cause having heretofore been submitted to the court for its consideration and decision upon the motion of the complainant, Charles D. Lanning, receiver of the San Diego Land and Town Company, for the discharge of the said Charles D. Lanning, as such receiver, and that the San Diego Land & Town Company of
95 Maine be substituted as complainant in said suit in lieu of the complainant above named, and the court having duly

considered the same and being fully advised in the premises, it is now, on the 6th day of December, 1897, ordered that said motion be, and the same hereby is, granted, and the San Diego Land & Town Company of Maine be, and hereby is, substituted as complainant in said suit in lieu of the complainant above named; to which ruling of the court defendants, by their counsel, J. S. Chapman, ask and are allowed an exception."

That on the 6th day of December, 1897, the San Diego Land & Town Company of Maine served upon defendants and filed the following notice of motion:

"THE SAN DIEGO LAND & TOWN COMPANY OF MAINE, Complainant,
vs.
H. C. OSBORN ET AL., Defendants.

"The defendants in the above-entitled suit are hereby notified that on Monday, the 20th day of December, 1897, at 10:30 o'clock a. m., or as soon thereafter as counsel can be heard, the complainant will, at the court-room of said court, in the Federal building, in the city of Los Angeles, State of California, move the court for an order that the bill in said suit be taken *pro confesso*, and that decree of the court be entered accordingly.

Said motion will be made on the minutes and proceedings of the court and the papers on file in said suit, and will be made upon the ground that exceptions have been sustained to the answer of the defendants, and that they have failed to file an amended answer within the time prescribed by law and the rules of the court.

WORKS & WORKS,
Solicitors for Complainant."

96 That on Monday, the 20th day of December, 1897, said circuit court made and entered its order as follows:

"THAT SAN DIEGO LAND & TOWN COMPANY OF MAINE, Complainant,
vs.
H. C. OSBORN ET AL., Defendants. } No. 671.

"This cause coming on this day to be heard, on the motion of complainant for an order that the bill in said suit be taken *pro confesso*, and that a decree of the court be entered accordingly—J. D. Works, Esq., appears as counsel for complainant and A. Haines, Esq., appears as counsel for defendants—now, on motion of defendants' counsel and with the consent of complainant's counsel, it is ordered that the cause be, and the same hereby is, continued two (2) weeks for said hearing."

That on the 27th day of December, 1897, the defendants served upon the counsel for Charles D. Lanning, receiver, complainant, the following notice of motion, to wit:

"(Title of Court)

"CHARLES D. LANNING, Receiver, Complainant,
vs.
H. C. OSBORN ET AL., Defendants.

"To Messrs. Works & Lee, attorneys for complainant:

Take notice that the defendants will on Monday, the 3rd day of January, 1898, move the court at the opening of the court on that day, or as soon thereafter as counsel can be heard for that purpose, to dismiss the suit upon the following grounds, to wit:

First. That the receiver has been discharged and has no
97 further interest in the matter.

Second. That the property has been sold under foreclosure and passed into the hands of another corporation, and the receiver no longer has any charge over it.

Third. That the San Diego Land & Town Company of Maine is not the successor of Lanning, the receiver, and has no interest in the matters alleged in the bill nor any right to prosecute the said action.

Fourth. That neither the original corporation nor the receiver nor any creditor of the said corporation has any interest in the subject-matter of this action, and that since the commencement of said action the board of supervisors of the county of San Diego have passed an order or resolution fixing the rates to be charged by the San Diego Land & Town Company of Maine for furnishing water to the defendants and to all others.

That said motion will be made upon the records and files in the case and the minutes of the court and upon the affidavit of J. S. Chapman; a copy of which is hereto annexed.

C. H. RIPPEY,
HAINES & WARD, &
J. S. CHAPMAN,
Attorneys for said Defendants.

Dated December 27th, 1897."

"(Title of Court and Cause.)

"STATE OF CALIFORNIA, } ss.:
County of Los Angeles, }

J. S. Chapman, being duly sworn, deposes and says that he is one of the attorneys for the defendants in the above-entitled action, and that he is informed and believes and therefore states that since the commencement of this action the board of supervisors of the county of San Diego, State of California, have duly passed an ordinance fixing the rates to be charged for the use of water by the San
98 Diego Land & Town Company of Maine, the successor of the San Diego Land & Town Company of Kansas, as will more fully appear by the certified copy of the ordinance hereto attached and made a part of this affidavit.

And further deponent saith not.

J. S. CHAPMAN.

Subscribed and sworn to before me this 27th day of December, 1897.

ALFRED C. DEZENDORF,
[SEAL.] *Notary Public in and for the County of Los Angeles, State of California.*"

(Certified copy of ordinance annexed.)

That on the 3rd day of January, 1898, the court made and entered its order in words and figures following, to wit:

"THE SAN DIEGO LAND & TOWN COMPANY OF MAINE, Complainant, *vs.* H. C. OSBORN ET AL., Defendants. } No. 671.

"This cause coming on this day to be heard on the motion of the defendants that the court dismiss the suit, and also to be heard upon the motion of complainant for an order that the bill in said suit be taken *pro confesso*, and that a decree of the court be entered accordingly, John D. Works, Esq., appearing as counsel for complainant, and J. S. Chapman, Esq., and A. Haines, Esq., appearing as counsel for defendants, and said motions having been presented to the court by counsel, it is now ordered that said motion to dismiss be, and the same hereby is, denied; and the defendants not having answered the bill, it is further ordered that said bill be, and the same hereby is, taken *pro confesso* as against all of said defendants, and that a decree of this court be entered in accordance with the opinions
99 of the court on file in this suit; to which ruling of the court defendants, by their counsel, note and allowed an exception."

That afterwards, on the 12th day of February, 1898, without proofs, the court made and caused to be entered in said cause, greatly to the prejudice and injury of your orators, its final decree; which said decree is entered at large upon the records of this court and is in words and figures as follows, to wit:

"In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

2 SAN DIEGO LAND & TOWN COMPANY OF MAINE, Substituted as Complainant in the Place of Charles D. Lanning, Receiver of the San Diego Land & Town Company, Complainant,

vs.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, MRS. E. L. WILLIAMS, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr.; H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencen Sullivan, W. C. Kimball, J. C. Frisbie, S.

W. Morgan, George Hannahs, Charles O. Brown, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Hines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, J. Morley, C.
100 F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Mohnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, J. H. Bowen, R. H. Longshare, W. O. Bowen, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, H. H. Rice, W. J. Henderson, P. W. Morse, O. Darling, Walter Price, S. J. Bradt, R. W. Vaughan, F. A. Moses, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoch, C. S. Johnson, C. W. Ellsworth, Wm. Steckle, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, D. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terrii, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under the Firm
101 Name of Ryan and Mack; F. E. Leslie and H. P. Whitney, Partners, Doing Business under the Firm Name of Leslie & Whitney; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, William Campbell, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George E. McMurry, F. H. Downs, N. W. Downs, I. P. Dana, Defendants.

It appearing to the court that on the 5th day of May, 1896, this suit was dismissed as to the defendants I. P. Dana, F. E. Lester,

H. P. Whitney, partners, doing business under the firm name of Lester & Whitney; H. Copeland, George O. Shattuck, J. S. Nickerson, F. A. Moses, John F. Hogan, Charles O. Brown, Fannie Grant, W. D. Bowen, C. W. Ellsworth, William Campbell, Walter Price, J. H. Bowen, William Steckel, H. H. Rice, and Sweetwater Fruit Company, and the exceptions of the complainant to the last amended and further answer of the other defendants, filed herein September 13, 1897, having been by the court sustained, and the said defendants having failed to amend their said answer or to plead further, and the complainant, San Diego Land & Town Company of Maine, having been ordered by this court, made and entered on the 6th day of December, 1897, substituted as complainant in place of the original complainant, Charles D. Lanning, receiver of the San Diego Land & Town Company of Kansas, and an order having been duly entered by this court on the 3rd day of January, 1898, that complainant's bill of complaint herein be taken *pro confesso*, for want of an answer, against all of the defendants except those as to whom the action was dismissed as aforesaid, and thirty days having expired since said last-mentioned order was made:

Now, therefore, as to those defendants against whom this action was dismissed as aforesaid the court finds that said defend-
102 ants are entitled to a decree of dismissal and for their costs.

The court further finds as against all of the other defendants that the allegations contained in the bill of complaint herein are true, and that the complainant, San Diego Land & Town Company of Maine, is entitled to a final decree against said defendants, in conformity to the opinion of the court filed herein September 14, 1896, and for the costs and expenses laid out and expended herein by said complainant and by the original complainant, Charles D. Lanning, receiver of the San Diego Land & Town Company of Kansas.

It is therefore considered and decreed by the court that this suit be, and the same is, dismissed as to the defendants as to whom the same was dismissed by the complainant as aforesaid, and that they recover of the complainant their costs.

It is further considered and decreed by the court that the defendants herein other than those defendants as to whom this suit has been dismissed as aforesaid be, and they are hereby, perpetually enjoined from prosecuting in the State courts or elsewhere separate actions against the complainant, San Diego Land & Town Company of Maine, to prevent said complainant from collecting or enforcing the collection of the rate of $7.00 per acre per annum for the irrigation of the lands of said defendants and each of them, fixed and established by the San Diego Land & Town Company and by Charles D. Lanning, receiver, as in the said bill set forth, until the fixing and establishing of such rates by the board of supervisors of the county of San Diego, State of California, or the re-establishment thereof in accordance with law.

It is further considered and decreed by the court that the said San Diego Land & Town Company and Charles D. Lanning, receiver, had the right to increase the amount of the water rentals of said

company for water furnished to the lands of said defend-
103 ants from $3.50 per acre per annum to the sum of $7.00 per acre per annum for such irrigation, and that the said defendants be, and they are and each of them is hereby, required to pay to the complainant said rate of $7.00 per acre per annum for water furnished their lands, as set forth in the bill of complaint herein, from and after the first day of January, 1896, until the fixing and establishing of such rates by the board of supervisors of San Diego county, California, or the re-establishment thereof in accordance with law, as a condition upon which water shall be furnished them by the complainant, and that upon failure of said defendants or any of them to pay said rates the complainant, San Diego Land & Town Company of Maine, be, and it is hereby, authorized to shut off the supply of water to such or any of said defendants who shall fail for five days to make such payment: Provided that the furnishing of water to the defendants for other purposes be not thereby interfered with.

It is further considered and decreed by the court that the complainant recover of said defendants the costs and expenses laid out and expended in this suit by the complainant, San Diego Land & Town Company of Maine, and by the original complainant, Charles D. Lanning, receiver of the San Diego Land & Town Company."

That your orators have paid the costs adjudged against them by said decree in the sum of $107.15, and have in all things obeyed and performed said decree.

104 And for errors apparent in the orders and decree aforesaid your orators and each of them, among other things, show:

Errors in Sustaining Exceptions to Answer Numbered First, Second, Third, Fourth, Fifth, Sixth.

First. That the order made in said cause under date November 22, 1897, sustaining the exceptions and any of the exceptions on part of complainant filed herein on Sept. 22, 1897, to the further answer and the supplemental answer of your orators, defendants in said cause, filed Sept. 13, 1897 (after the expunging of the entire former answers of defendants by the orders of the court sustaining complainant's exceptions thereto for irrelevancy and impertinence), is erroneous in the following respects, to wit:

Said order erroneously treated and considered said exceptions filed September 22, 1897, as raising for decision the merits of the defenses set forth in said answer, and said order expunged said answer from the record and deprived all said defendants, including your orators, of their right to have said answer considered upon the final hearing of said cause, whereas the merits of said defenses were open to decision on the face thereof only upon the setting down of the cause for hearing upon bill and answer, and that your orators were by said order deprived of their rights to have the merits of said defenses on their face regularly determined upon the setting of the cause for hearing on bill and answer, or upon issues raised and proofs made.

Errors in Sustaining Exception Numbered First to the Further Answer and Supplemental Answer.

Second. That said order of November 22, 1897, in sustaining of the exceptions filed herein Sept. 22, 1897, to the answer of your orators, filed Sept. 13, 1897, that numbered "first," for alleged immateriality, irrelevancy, and impertinency, is error apparent,
105 in that the expunging thereby of the parts of the answer in said first exception set forth prevented all the defendants from showing upon the record of said cause and from establishing by proofs or otherwise and from having any benefit of the matters and defenses set forth in all such parts of their answer, although neither of the matters excepted to nor any part or parts thereof are immaterial, irrelevant, or impertinent.

And that said order is error apparent in sustaining each subdivision of said first exception and in expunging the portion of the answer in each such subdivision set forth, to wit, subdivision 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44.

That it was error apparent among other errors to consider and adjudge by said order upon said first exception the matters following, to wit:

That all of the allegations of said answer setting forth that the waters and water system of the San Diego Land & Town Company of Kansas were its private property were immaterial, irrelevant, and impertinent.

And that all the allegations of said answer setting forth that said corporation, by the contracts, agreements, conveyances, transfers, acts, representations, classifications, and admissions made by it and made under the circumstances, all as in the answer set forth, did grant to and vest in your orators and did recognize and acknowledge their water rights and freehold easements of the flow and use of water from said water system as appurtenant to lands owned respectively by your orators and as constituting corresponding freehold servitudes on said company's water system were immaterial, irrelevant, and impertinent, and that they were so in virtue of the constitution and laws of the State of California.

And that all the allegations of said answer setting forth
106 that all claims and demands of said company for the price or compensation for said water rights, easements, and servitudes had been paid or otherwise satisfied were immaterial, irrelevant, and impertinent, and that all such freehold water rights, easements, and servitudes were void and in conflict with the constitution and laws of said State.

And that all the allegations of said answer setting forth the representations, agreements, and contracts, made by said corporation of Kansas to and with each of your orators, fixing the water rate for irrigation of their lands under their respective water rights, easements, and servitudes at the rate of $3.50 per acre per annum

were irrelevant, immaterial, and impertinent, and that any such contracts or agreements are in conflict with the constitution and laws of the State of California and void, and that all such allegations of the contractual fixing of water rates in connection with all such allegations of water rights, easements, and servitudes were altogether impertinent in defense to the demand of said corporation and its said receiver to increase without the consent of your orators the rate of $3.50 per acre per annum for irrigation of their lands to $7 per acre per annum.

And that all the allegations of said answer setting forth that the rate of $3.50 per acre per annum for irrigation of the lands of your orators was the only rate which had ever been actually established and collected by said corporation were immaterial, irrelevant, and impertinent.

And that the allegations that your orators were induced to purchase, improve, and settle upon their respective tracts of land in reliance upon said established rate of $3.50 per acre were immaterial, irrelevant, and impertinent.

And that the allegations that your orators had for more than five years held and enjoyed the use of said water upon their land
107 for irrigation purposes at said annual rate of $3.50 per acre, and that the right to have and enjoy the use of said water at said rate became vested in your orators respectively by operation of the statute of limitations of the State of California, were immaterial, irrelevant, and i ertinent.

Amended by order of court December 5th, 1898. Wm. M. Van Dyke, clerk.

> And that the allegations that your orators were induced to purchase, improve, and settle upon their respective tracts of land in reliance upon said established rate of $3.50 per acre were immaterial, irrelevant, and impertinent.
>
> And that the allegations that your orators had for more than five years held and enjoyed the use of said water upon their land for irrigation purposes at said annual rate of $3.50 per acre, and that the right to have and enjoy the use of said water at said rate became vested in your orators respectively by operation of the statute of limitations of the State of California, were immaterial, irrelevant, and impertinent.

And that all the allegations of said answer setting forth the total irrigation capacity of said water system and the proportion of the same not used and all the other facts and circumstances pertaining to the reasonableness of said increase of rate set forth in said answer were irrelevant, immaterial, and impertinent to be answered to such demanded increase.

[Matter enclosed between rules erased in copy.]

And that the denial that said corporation was entitled to demand from your orators water rentals beyond $3.50 per acre per annum to apply upon the demanded net income of six per cent. per annum was immaterial, irrelevent, and impertinent.

And that the denial that the compensation to said corporation for either of your orators' respective water rights, easements, and servitudes was or still is subject to regulation by any board of supervisors of said State, as provided in said act of 1885, was irrelevant, immaterial, and impertinent.

And that the denial that at the said rate of $3.50 per acre for irrigation, together with rates for domestic use, if water should be demanded and used upon the whole of the land which the
108 said system is able to supply with water, said company would not be able to pay its operating expenses and maintain from such rentals its plant and system, and the denial that by reason of said established rate said company was losing money, and the denial that the plant of said company is going to decay, without sufficient resources from said rate for replacing the same, and the denial that said company at said rate of $3.50 will be compelled to furnish water to consumers at any loss, or that, if said rate of $3.50 is maintained, said system will be lost, are immaterial, irrelevant, and impertinent.

And that the allegation of the requirement, as a condition to the refraining by said company and its receiver from shutting off the supply of water to each of your orators under their respective water rights and easements, that your orators should subscribe and execute the agreement, designated "Application for water," set forth in the complaint was immaterial, irrelevant, and impertinent.

And that the denial that any increase of the said rate of $3.50 is at all necessary to enable said corporation or its receiver to maintain and operate said water plant and pay the expenses of the maintenance and operation thereof is irrelevant, immaterial, and impertinent.

That the allegations relating to the amount in controversy as to each of your orators and as affecting the jurisdiction are irrelevant, immaterial, and impertinent.

And that the allegations of the answer which rely upon and invoke the application of the provisions of section one of article XIV and of article V of the amendments to the Constitution of the United States, and which rely upon and invoke the application of section one of article I and of section nine of article XX of the constitution of California, and which rely upon and invoke section
11½ of the amendment of the act of March 12, 1885, of the
109 State of California, set forth in said answer, and each of them, are immaterial, irrelevant, and impertinent.

Error in Sustaining the Second Exception.

Third. That there is error apparent in the said order of November 22, 1897, in that it sustains the second of the exceptions filed herein September 22, 1897, to the answer filed Sept. 13, 1897, inas-

much as the bill of complaint alleges that each of your orators, defendants to said bill, are owners of their water rights and alleges no distinction or discrimination between such rights, whether acquired by purchase or otherwise, and calls for no answer as to which became such owners by purchase and which became owners otherwise, and that the answer is not evasive or uncertain, as alleged, but shows that such water rights, easements, and servitudes, however acquired, are each in freehold, and that each has been created by said corporation of Kansas, and that compensation for each has been paid, or that satisfaction has been otherwise made to said corporation for the same.

Error in Sustaining Third Exception.

Fourth. That there is error apparent in the order of November 22, 1897, in so far as it sustains the third of the exceptions filed herein September 22, 1897, to the answer filed Sept. 13, 1897, in that said exception assumes, against the fact, that said answer admits that the just cost of said water system to said corporation of Kansas was $750,000, and in that said exception assumes, against the fact, that it affirmatively appears by the said answer that the annual rental of $7 per acre per annum will not and cannot realize to said company the sum of 6 per cent. net income per annum, and in that said exception assumes and said order sustains the assumption that the law of the State of California allows said company, as against your orators, the defendants to said bill, as a reasonable return on their investment the sum of not less than 6 nor more than
110 18 per cent. net on the value of said plant and system without regard to the water rights, easements, and servitudes owned by your orators, as set forth in their said answer, and without regard to the agreements of said company with your orators as to the annual rate of $3.50 per acre per annum, as set forth in said answer.

Error in Sustaining Fourth Exception.

Fifth. That there is error apparent in said order of November 22, 1897, in so far as it sustains the exception numbered fourth of those filed September 22, 1897, to the answer filed Sept. 13, 1897, in that said exception points out no matter in the bill of complaint which is not well and sufficiently answered or respecting which the denials or averments of the answer are evasive, imperfect, or insufficient; wherefore said exception is insufficient in form to point out to or inform the defendants to said bill of any insufficiency in said answer, and on that ground ought not to have been sustained.

And that there is error apparent in said order, in that none of the denials, admissions, or averments in said answer are evasive or imperfect or insufficient.

Error in Sustaining the Fifth Exception.

Sixth. That there is error apparent in the order of November 22, 1897, sustaining the exception numbered fifth of those filed September 22, 1897, to the answer filed September 13, 1897, in that said order assumes and decides that the question whether it appears from the answer of the defendants that the complainant receiver has legally established and is entitled to collect a water rental of $7.00 per acre per annum for the irrigation of the lands of the defendants and each of them respectively is properly triable upon exception to the answer.

And that there is error apparent in said order, in that said exception assumes and said order sustaining it decides that it appears affirmatively or in anywise from said answer that said cor-
111 poration of Kansas or said receiver complainant had or has legally established and is entitled to collect a water rental of $7.00 per acre per annum for the irrigation of the lands of the defendants or any of them.

And that there is further error apparent in said order, in that it sustained the part of said exception charging that the defendants (your orators) had no standing in said court and cause to contest the reasonableness of the rate of $7.00 per acre per annum demanded by complainant, but that their remedy, if any they have, is to apply to the board of supervisors of the county in which their said land is situated to fix and establish the rates to be paid for such water.

That the order sustaining said exception is error apparent, in that it so construed and applied to this cause the statute of California approved March 12, 1885, referred to in the bill of complaint, as that said statute operated and operates to deprive each of your orators of his and her and its water rights, easements, and servitudes and of the right to enjoy the same at the rate of $3.50, actually established and collected by said corporation and as established by the contracts, all as in said answer set forth and all without due process of law, and to deprive your orators of their liberty to contract for their said water rights, easements, and servitudes without due process of law, and to deny to each of your orators the equal protection of the laws, all in contravention of section one, article XIV, of the amendments to the Constitution of the United States, and article five of the amendments to the Constitution of the United States, and that said order is error apparent, in that it so construes said statute as that the same conflicts with article one, section I, of the Constitution of the State of California, and with section nine (9) of article 20 of the Constitution of the State of California.

Error in Sustaining Sixth Exception.

112 Seventh. That there is error apparent in the said order of November 22, 1897, in so far as it sustains the exception numbered sixth of the exception filed September 22, 1897, for that it was not competent to raise upon exception to the answer the ques-

tion whether it shows on its face that complainant is legally or equitably entitled to charge and collect the rate of $7.00 per acre for the irrigation of the lands of your orators or whether said raised rate is reasonable and just.

And for that the facts set forth in said answer do not sustain the charge set forth in said exception and sustained by said order.

Eighth. That there is error apparent in the aforesaid order made and entered on the 6th day of December, 1897, substituting the San Diego Land & Town Company of Maine as complainant in place of the oroginal complainant, Charles D. Lanning, receiver of the San Diego Land & Town Company of Kansas, in that said order was irregular and not in accordance with the practice prescribed by rule 57 of rules of practice for the court of equity of the United States, and that thereby your orators, as defendants to said bill, were denied opportunity to demur, plead, or answer to any supplemental bill setting forth any alleged interest in said cause of the San Diego Land & Town Company of Maine.

Ninth. That there is error apparent in the aforesaid order entered in said cause on the 3rd day of January, 1898, that complainant's bill of complaint be taken *pro confesso* for want of an answer against your orators, defendants to said bill, in this:

That, notwithstanding the sustaining of the exceptions for immateriality, irrelevancy, and impertinence to all those parts of said answer set forth in the exception numbered first and the expunging of the same, the admissions, denials, and averments in the
113 answer not excepted to raised material issues in said cause, and that the said order is not warranted by the course of practice in equity or by any equity rule whereby your orators were deprived of a hearing upon the merits of said cause.

Errors Apparent in Decree.

Tenth. That no decree in favor of the complainant ought to have been made or granted on the bill of complaint, for that the decree is not warranted by the allegations of the bill of complaint.

Eleventh. That the decree in said cause is, upon the allegations of the bill of complaint, against the statute law of the State of California entitled "An act to regulate and control the sale, rental, and distribution of appropriated water in this," &c., &c., as approved March 12, 1885, and as amended by the act of the law of said State approved March 2, 1897, in this—

That it appears on the face of said bill that the San Diego Land & Town Company of Kansas at the time when it commenced to furnish water to consumers, to wit, in the year 1887, established the annual rate of $3.50 per acre for irrigation, and that said corporation and C. D. Lanning, as its receiver, from said date continually maintained and collected said rate and no more from all consumers and at no time collected any other rate, and that said rate at the time of filing said bill was and at the date of said decree remained the only actual rate established and collected by said corporation or its said receiver, and that it further appears by the said bill that

the board of supervisors of the county of San Diego mentioned in the complaint had not fixed or established rates of yearly rental at which said San Diego Land & Town Company should furnish water to consumers.

And that by the said statute law it was and is provided that until such rates should be so established by such board of supervisors the actual rates established and collected by every such corporation should be deemed and accepted as the legally
114 established rate thereof, and that said statute law further provided and provides that every such corporation furnishing water to lands, as did said Kansas corporation to the defendants (your orators), as alleged in said bill, shall furnish such waters at rates not exceeding the established rates as fixed and established by such corporation as provided in said act, and that said statute provided and provides that every such company shall be obliged to furnish such water at the established rates regulated and fixed therefor as in said act provided to the extent of the actual supply of the waters of such corporation.

That by said decree your orators, defendants in said action, are deprived of the use of water from said system for irrigation at the rate actually established and collected by the San Diego Land & Town Company of Kansas at the time when your orators respectively became owners of their water rights and at the only rates at any time actually established and collected by said corporation or its receiver prior to and since said vesting of the said water rights, to wit, at the rate of $3.50 per acre per annum.

Twelfth. That the decree in said cause, upon the allegations of the said bill, is against the rights of your orators, named as defendants to said bill, in that said bill of complaint shows upon its face that your orators are the owners respectively of tracts of land under the water system of said San Diego Land & Town Company of Kansas, and that your orators own and hold small tracts of land of only a few acres each, and said bill further shows that each of your orators respectively had become and was the owner of a water right to such part of the water appropriated and stored by said company as is necessary to irrigate his tract of land, subject to such yearly rental as said company was entitled to charge.

That it further appears on the face of said bill that the
115 annual expense of operating and keeping in repair the reservoir and water system of said company and of furnishing all consumers under said system is, exclusive of interest on the bonds of said company, the sum of $12,034.99.

That it further appears from said bill that the annual income from water rates collected under said system was $25,715.00.

And that the rate actually established and collected by said company for furnishing water for irrigation of the lands of your orators and *his* codefendants named in said bill under their said water rights was $3.50 per acre per annum, and that the proceeds of the same enters into the aggregate annual income of said water system.

And notwithstanding the said bill shows that said company and the said C. D. Lanning, the receiver of said company, the complain-

ant thereon, gave notice to your orators, defendants to said bill, that from and after January 1, 1896, they would demand a rental of $7.00 per acre per annum for water for irrigation, being twice the rate up to that time actually established and collected by said company or its receiver for furnishing your orators with such water, and notwithstanding that said bill further shows that because your orators and each of them refused to pay said rate of $7.00 per acre, and maintained that neither said land & town company nor said C. D. Lanning, as receiver thereof, had any legal right to increase the amount of rental to be paid by them or any of them, and maintained that the rate of $3.50 established and collected by the said land & town company must be and remain the established rate of rental, the said receiver, in order to enforce the payment of said increased rentals, caused the said water to be shut off from the premises of the defendants and each of them, and did deprive your orators, defendants in said action, of the use and enjoyment
116 of their said water rights upon payment of the rates of $3.50 per acre per annum actually established and collected by said corporation and collected by said receiver.

Yet that the decree herein erroneously holds, decides, and decrees that said San Diego Land & Town Company of Kansas and Charles D. Lanning, receiver thereof, had the right to increase the amount of the water rentals of said company for water furnished to the lands of said defendants from $3.50 per acre per annum to the sum of $7.00 per acre per annum without the consent of any of your orators, and erroneously holds, decides, and decrees that your orators shall be required to pay to the San Diego Land & Town Company of Maine said rate of $7.00 per acre per annum for water furnished to their lands, as set forth in the said bill of complaint, from and after the first day of January, 1896, until the fixing and establishing of such rates by the board of supervisors of San Diego county, California, or the re-establishment thereof in accordance with law as a condition upon which water should be furnished them from said water system, and erroneously holds, decides, and decrees that the San Diego Land & Town Company of Maine is authorized to shut off the supply of water for irrigation of such lands of any of your orators, the defendants to said bill, who should fail for five days to make such payment of arrears of said increase of water rate.

Whereby your orators, the said defendants, are deprived of all benefit of the ownership of their water rights and, notwithstanding said ownership, are required as a condition to the enjoyment of their said easements to pay to said San Diego Land & Town Company of Maine an annual rate to yield, as appears by said bill, an excess over and above the actual cost of repairs, operation, and management of said water system as and for interest and net revenue upon the whole cost and value of said system and without regard to the servitudes thereon owned by your orators.

117 Thirteenth. That the decree in said cause, on its face and on the face of said bill, enforces legislation of the State of California so construed as that it is in violation of sec. one (1) of

article 14 of the amendments of the Constitution of the United States, in that the legislation so construed and enforced maintains the San Diego Land & Town Company of Kansas and C. D. Lanning, its receiver, in increasing the water rentals for water furnished to the lands of your orators for irrigation of their respective lands from $3.50 per acre per annum to $7.00 per acre per annum for such irrigation without the consent of your orators, and in that said legislation, so construed and enforced, justifies and maintains the said Kansas corporation and the said receiver and the San Diego Land & Town Company of Maine in having shut off the flow and use of the water under the water rights owned by the defendants to said bill from the lands of such defendants (your orators), as shown in said bill, for refusal to pay such increase of rate, and in that said legislation, as so construed and enforced, requires your orators to pay the San Diego Land & Town Company of Maine the rate of $7.00 per acre per annum for water furnished their lands, as set forth in said bill of complaint, from and after January 1, 1896, as the condition upon which water shall be furnished them from said water system, and that the legislation so construed and applied authorizes said last-named corporation to shut off the supply of water to any defendant who shall for five days fail to pay such increase of rate; by which means each of your orators is deprived of his, her, and its property without due process of law, and each is likewise deprived of the equal protection of the laws, and each is likewise without due process of law deprived of his, her, and its liberty to purchase or otherwise acquire the water rights in the complaint referred to, and is deprived of his, her, and its liberty to have the benefit of any acquisition, as in the complaint set
118 forth, of such water rights.

And that said decree, for the same reasons, is in contravention of article V of the amendments to the Constitution of the United States, as being an exercise of the judicial power of the United States, whereby your orators are deprived of their property without due process of law, and whereby they are deprived without due process of law of their liberty to contract and acquire property.

Fourteenth. That there is error apparent in said decree in that it was entered *pro confesso* and without proofs upon the allegations of the bill, and without regard to the unexpunged portions of the answer, and without regard to the portions of the answer expunged on said exceptions filed September 22, 1897, and because it ruled, in conformity to the opinion filed in said action Sept. 14, 1896, adopted by and referred to in said decree, that notwithstanding the alleged fact that $3.50 per acre per annum was the only rate for water supplied for irrigation that had been established and collected by said San Diego Land & Town Company of Kansas or said Charles D. Lanning, receiver, that said San Diego Land & Town Company and Charles D. Lanning, receiver, had the right to increase the amount of the water rentals of said company for water furnished to the lands of defendants (your orators) from $3.50 per acre per annum to the sum of $7.00 per acre per annum for such irrigation, and that the contracts with respect to the rates of $3.50 per acre per

annum, set forth in the answer, were void, as being in conflict with the constitution and laws of the State of California, and because it rules that your orators had no right to be heard before the court on the question of the reasonableness of the rates of $7.00 per acre per annum, which the complainant in said action sought to enforce and which said decree enforces, and because it rules that the defendants to said bill of complaint (your orators) were not entitled, upon the question of the rightfulness and lawfulness of the
119 increase of the rate of $3.50 per acre per annum to $7.00 per acre per annum, to have any benefit of the ownership of their respective water rights, as set forth in the bill of complaint, or of their freehold easements and servitudes upon said company's water system, as set forth in their answer, nor of the alleged fact that each ha*h* paid or made satisfaction to said San Diego Land & Town Company of Kansas for the price demanded by it for his, her, and its such water right, easement, and servitude.

That in point of law, among other things, said errors are, to wit:

1st. Said decree in said respects erroneously construes and applies the provisions of the constitution and laws of the State of California referred to in the bill of complaint and answer.

2nd. That said provisions of the constitution and laws, as so construed and applied by said decree, are in contravention and repugnant to article XIV, sec. 1, of the amendments to the Constitution of the United States, as depriving your orators of their property without due process of law, and as depriving them of their liberty of contract without due process of law.

3rd. That in applying the said provisions of the State constitution and statutes, as so construed by said decree and the opinion referred to therein, the judicial power of the United States was exercised in contravention of article V of the amendments to the Constitution of the United States, and deprived the defendants in said action (your orators) of their property without due process of law and of their liberty of contract without due process of law.

4th. And that the provisions of article XIV of the constitution of the State of California, as so construed, applied, and enforced by said decree, are in violation of the guarantee, by section IV of ar-
120 ticle IV of the Constitution of the United States, of a republican form of government to said State of California, in that by said provision of the constitution of said State, as so construed, applied, and enforced, the said State assumes the absolute control of all water appropriated and devoted to sale, rental, and distribution, and the absolute control of all works devoted to the supplying or distribution of such waters; abolishes all capacity for the acquisition of private property rights, easements, or servitudes in such water supply and water works; abolishes all right to unite the ownership of any water supply from any such system with the ownership of lands for irrigation thereof by contract of purchase and payment or otherwise; abolishes all right or capacity for the acquisition of any water right, easement, or servitude in or upon any such water system, by purchase or otherwise, free from the perpetual obligation to pay net revenue, as the said statute now stands, of not less than six nor

more than eighteen per cent. per annum upon the cost or value of such water system, and abolishes all right or capacity to ascertain, fix, and define by contract or convention the rate or compensation to be paid by any consumer for the supplying of any such waters for irrigation of land.

Fifteenth. That there is error apparent in said decree in that said decree is made in favor of the San Diego Land & Town Company of Maine, although said corporation has not become a party to the record in said cause by supplemental bill or otherwise; and what interest, if any, said corporation hath or had in said action does not appear upon the record, nor was any claim on its part to any interest so set forth that the defendants to said bill of complaint, your orators, could in anywise make answer thereunto or plead thereunto.

Sixteenth. That there is error apparent in said decree in that this court was without jurisdiction to entertain said cause or to make any decree upon the merits therein.

121 Seventeenth. That there is error apparent in the said order of the court made on the 3rd day of January, 1898, denying the motion of defendants in said cause to dismiss said suit and in retaining the jurisdiction thereof after the discharge of C. D. Lanning, receiver, the complainant therein, made by order of the court on the 6th day of December, 1897.

Wherefore, as said errors appear on the face of the record and are greatly prejudicial to their complainants and [his]* A rights in the premises, complainants pray that said decree may be reviewed, reversed, and set aside and no further proceedings taken therein; and to that end complainants pray process by subpoena against the San Diego Land & Town Company of Maine, requiring it to appear and answer hereunto and show cause, if it may, why said decree should not be reviewed, reversed, and set aside, and such further orders and decrees be made as to the court may seem just, including the restoration to your orators of the sum of money paid under said decree as aforesaid.

Amended by order of court December 5th, 1898. Wm. M. Van Dyke, clerk.

C. H. RIPPEY AND
HAINES & WARD,
Solicitors for Complainants.

(Endorsed:) Circuit court of the United States, ninth circuit, southern district of California. H. C. Osborn *et al.*, complainants, *vs.* San Diego Land & Town Company of Maine, defendants. Bill of review. C. H. Rippey, Haines & Ward, solicitors for complainants. No. 839. U. S. circuit court, southern district of California. H. C. Osborne *et al. vs.* San Diego Land & Town Company of Maine. Bill of review. Filed Aug. 12, 1898. Wm. M. Van Dyke, clerk. E. H. Owen, deputy clerk.

[*Word enclosed in brackets erased in copy.]

122 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

H. C. OSBORNE ET AL., Complainants,
vs.
SAN DIEGO LAND AND TOWN COMPANY OF MAINE, Defendant.

The defendant moves the court to strike the bill of complaint in the above-entitled suit from the files of said court and to dismiss said suit on the ground that the decree in the suit of San Diego Land and Town Company of Maine *vs.* H. C. Osborne *et al.*, mentioned and set forth in the said bill of complaint and sought to be reviewed herein, has not been performed or complied with, nor has leave been obtained from this court for the complainants to prosecute this suit without performing or complying with said decree.

WORKS & WORKS,
WORKS & LEE,
Solicitors for Defendant.

The complainants are hereby notified that on the 5th day of September, 1898, at 10.30 o'clock a. m., or as soon thereafter as counsel can be heard, the defendant, San Diego Land and Town Company of Maine, will, at the court-room of said court, in the Federal building, in the city of Los Angeles, State of California, move said court as set forth in the above and foregoing motion.

Said motion will be made on the grounds set forth therein, and will be based upon the pleadings, minutes, proceedings, and decree in the said case of San Diego Land and Town Company of Maine, substituted instead of Charles D. Lanning, receiver, *vs.* H. C. Osborne *et al.*, bill of complaint in this suit of H. C. Osborne *et al. vs.* San Diego Land and Town Company of Maine, and the affi-
123 davit of John E. Boal, copy of which is served with this notice.

WORKS & WORKS,
WORKS & LEE,
Solicitors for Defendant.

124 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

H. C. OSBORN ET AL., Complainants,
vs.
SAN DIEGO LAND & TOWN COMPANY, Defendant.

John E. Boal on his oath says that he is the general manager of the defendant in the above-entitled case; that it is adjudged and decreed in the final decree made and entered in the case of San Diego Land & Town Company of Maine *vs.* H. C. Osborn *et al.*, set forth in the bill of complaint herein, as follows:

"That the said defendants be, and they are and each of them is hereby required to pay to the complainant said rate of $7.00 per acre per annum for water furnished their lands, as set forth in the bill of

complaint herein, from and after the 1st day of January, 1896, until the fixing and establishing of such rates by the board of supervisors of San Diego county, California, or the re-establishing thereof in accordance with law."

That the complainants herein have had and used the waters of the defendant for the irrigation of their lands mentioned and described in the pleadings and proceedings set forth in the bill of complaint herein from the 1st day of January, 1896, until the present time, and have not, as provided in said decree, paid the said rate of $7.00 per acre per annum therefor, but have paid only the sum of $3.50 per acre per annum, and have refused and still refuse to pay any greater amount therefor, and have insisted and maintained and do now insist and maintain that said rate of $7.00 per acre per annum decreed by this court to be the legally established rate is
125 illegal and void.

That the board of supervisors of the county of San Diego, California, did not fix or establish rates to be charged by the defendant herein until the 16th day of October, 1897, nor have the rates fixed by the said San Diego Land & Town Company of Kansas and the receiver of said company, Charles D. Lanning, been re-established in accordance with law.

JOHN E. BOAL.

Subscribed and sworn to before me this 19th day of August, 1898.

JERAULD INGLE,
[SEAL.] *Notary Public in and for the County of San Diego, State of Calif.*

(Endorsed:) No. 839. U. S. circuit court, ninth circuit, southern district of California. H. C. Osborne *et al.*, complainants, *vs.* San Diego Land & Town Co. of Maine, defendant. Notice of motion to strike bill from files. Received copy of the within notice Aug. 29, 1898. Haines & Ward, solicitors for complainants. Filed Oct. 27, 1898. Wm. M. Van Dyke, clerk. Works & Works, Wells & Lee, Works & Lee, rooms 420 to 425 Henne building, Los Angeles, Cal., solicitors for defendant.

126 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

H. C. OSBORN ET AL., Complainants,
vs.
SAN DIEGO LAND & TOWN COMPANY OF MAINE, Defendants. } Affidavit.

COUNTY OF SAN DIEGO, } ss.:
State of California, }

Monroe Johnson, being duly sworn, on his oath says—

That he is one of the complainants in the above-entitled cause and one of the defendants in the suit of The San Diego Land &

Town Company of Maine *v.* H. C. Osborn *et al.*, numbered 671, mentioned in the bill of complaint and in the motion of defendant herein to strike said bill from the files of the court and dismiss this suit.

That the affidavit of John E. Boal, filed with said motion, does not correctly or truthfully set forth the relief part of the decree in said cause 671, but that said decree is fully and correctly set forth in the bill of complaint herein.

That the water rates to be charged by defendant were fixed and established by the board of supervisors of the county of San Diego, California, on October 16, 1897, as stated in the said affidavit of said Boal, and that the rate so fixed for irrigation was and remains $3.50 per acre per annum.

That the decree in said cause 671 was entered on March 12, 1898.

That neither this affiant nor, as he is credibly informed and believes, did any other complainant herein and defendant to
127 said decree use any water from said company's system for irrigation after said decree until nearly June 1, 1898.

That on or about March 26, 1898, these plaintiffs, among other consumers, entered into a written agreement with The San Diego Land & Town Company, defendant herein, for the apportionment of the water in said company's reservoir, which was signed by said company and generally by the plaintiffs, a copy of which, except signatures, is shown by "Exhibit A," hereto annexed.

That the average of said apportionment is about one-half the normal supply, and that by said apportionment the plaintiff conceded to the said company as a consumer some of their claims as prior consumers to a full supply and shared the same with said company and others as later comsumers.

That thereupon the larger proportion of these plaintiffs bought and the remainder hired meters of said land & town company for measuring to plaintiffs the water pursuant to said agreement for apportionment.

That said company commenced to deliver water for irrigation to plaintiffs and others about said first of June, 1898, through said meters, under and pursuant to said agreement of apportionment and not otherwise, and has exclusively managed and controlled such delivery according to said apportionment ever since, and has actively aided complainants in taking and using such apportioned waters, and that prior to October 1, 1898, the supply of water from said system for irrigation was exhausted, leaving many of the consumers much short of the supply apportioned to them by said agreement, and by that date irrigation ceased.

That none of the complainants since the entry of said decree has had or used any water of the defendant for the irrigation of any of their lands against the will or without the consent of the company or otherwise than with the consent and concurrence of said company and under said written agreement of apportionment, and that since said decree the said company has at all times up to this date

sent bills to these complainants for the rental of said water
128 at the rate of $3.50 per acre per annum, being the full ordinance rate, notwithstanding the short supply and the entire cessation aforesaid, in the form shown by Exhibit "B," hereto annexed, and the complainants have uniformly paid the same and the company has accepted the same.

That none of these complainants have at any time since the signing of said decree used or threatened to use any legal or other compulsion to cause said company to forego the condition prescribed in said decree to its obligation to furnish water to these complainants, but that said company has of its own will and discretion refrained from availing itself of said condition, and has either suspended or waived the same during all the time it has so furnished said water.

That these complainants have not taken, used, or threatened to take or use the waters from said company's system in violation of the condition imposed by said decree, but have, as they believe, in all things obeyed said decree where passive obedience is required by it, and have performed it where it has imposed upon them an unconditional and affirmative duty or command.

That none of these complainants have insisted or maintained or do insist or maintain that said decree shall not be respected and obeyed, or maintain or insist upon any right, except such as they may properly exercise, to have the same reviewed in this court and appellate courts; that neither of them maintain or insist that the rate of $7.00 per acre per annum decreed by this court to be the legally established rate is illegal and void, as long as said decree remains in force, as is alleged in the affidavit of John E. Boal, but they only by their bill of review herein seek to maintain that there is error apparent in such decree as ground for reviewing and reversing the same.

And affiant for himself and his co complainants avers as ground of appeal to the discretion of the court herein that the complainants, as defendants to the original bill in said cause 671, have presented as a defense the fact that the rate of $3.50 per acre per annum was the only rate actually established and collected by the San
129 Diego Land & Town Company of Kansas and its receiver, and have submitted in said action that under section five of the act of 1885 such rate was equally binding upon said company, its successor in interest, and these complainants; that they conceive that any voluntary payment by them of the rate of $7 per acre per annum would be to consent to a change of the rate for irrigation from $3.50 per acre per annum to $7.00 per acre per annum, which would then become the rate actually established and collected.

That complainants are apprehensive that the voluntary payment of said rate would deprive them of their standing to insist on review or otherwise that $3.50 was the only rate actually established and collected.

That whether said position is well or ill founded, it is taken in good faith, and plaintiffs appeal to the discretion of the court that they be not required to change their position in the controversy to their possible detriment as a condition to submitting their bill of review herein.

MONROE JOHNSON.

Subscribed in my presence and sworn to before me, by said Monroe Johnson, this 21st day of October, 1898.

M. L. WARD,
Notary Public in and for the County of
San Diego, State of California.
[SEAL.]

Ninth Circuit, Southern District of California, San Diego County.

STATE OF CALIFORNIA, *ss:*

We, F. B. Merriam, A. C. Crockett, Ira Howe, W. J. Henderson, and P. B. Smith, each being duly sworn, each for himself says that he has heard the foregoing affidavit of Monroe Johnson read; that he is a complainant in said cause, and is informed and knows concerning the facts deposed to by said Johnson, and that the facts stated in the affidavit by said Johnson are true.

130

F. B. MERRIAM.
A. C. CROCKETT.
IRA HOWE.
W. J. HENDERSON.
P. B. SMITH.

Subscribed and sworn to before me and in my presence this 3rd day of November, 1898.

[SEAL.]

M. L. WARD,
Notary Public in and for San Diego County, Cal.

131 "EXHIBIT A."

Agreement.

E. J. Swayne moved that the form of contract to be submitted to the consumers be as follows and preceded by the agreement of the San Diego Land & Town Company as follows:

The undersigned San Diego Land & Town Company of Maine agrees to the following apportionment of the water in accordance with the following apportionment adopted at the mass meeting of consumers at National City March 26th, 1898, and as consumers we agree to accept and take only our quantity as herein apportioned for the time and in the manner herein provided.

The undersigned consumers of water, under the Sweetwater system, in view of the short visible supply impounded in the reservoir of the system for use the present season, hereby mutually agree to the following apportionment of the supply of water now in the reservoir for irrigation among consumers, such apportionment to apply to water now impounded: said apportionment is as follows:

To trees planted in 1897, 45,000 gals. per acre, which am'ts to.....	2,430,000
To trees planted in 1898, 60,000 gals. per acre, which am'ts to.....	14,220,000
To trees planted in 1895, 72,000 gals. per acre, which am'ts to.....	46,584,000

To trees planted in 1894, 90,000 gals. per acre, which am'ts to	33,210,000
To trees planted in 1893, 110,000 gals. per acre, which am'ts to	61,600,000
To trees planted in 1892, 135,000 gals. per acre, which am'ts to	94,095,000
To trees planted in 1891, 170,000 gals. per acre, which am'ts to	131,920,000
To trees planted in 1890, 210,000 gals. per acre, which am'ts to	275,100,000
	659,159,000

Vegetable gardens, nurseries, alfalfa, ornamental trees, and lawns are to be counted as trees planted and receive the same apportionment of water according to trees planted in 1890.

132 *Exhibit A Continued.*

In case of increase of supply the apportionment to be proportionately increased.

We hereby authorize the San Diego Land & Town Company during the season of 1898 to apportion the said water in accordance with the above schedule and apportionment and to distribute to themselves, as consumers of water, the same proportion that would fall to the lot of any other consumer according to the class to which he belongs.

But it is expressly understood that by this agreement we waive no right as consumers or land-owners as between ourselves or the company beyond granting the license to prorate water, as above, for the present season.

We further agree that the following committee of seven, appointed pursuant to the action of the mass meeting of consumers held March 26, 1898, to wit, R. C. Allen, L. E. Allen, L. W. Goff, D. K. Adams, E. Thelan, E. J. Swayne, and A. Haines, be authorized to represent us in all matters connected with the foregoing agreement and to act as arbitrators in the dispute between consumers or with the company growing out of the same.

SAN DIEGO LAND & TOWN COMPANY,
By —— ——.

133 *Exhibit A Continued.*

The undersigned agrees to purchase for himself or co-jointly with others the meter or meters required to measure the water apportioned to his or their lands.

Name.	No. of meter.	Size.

The undersigned herewith applies for meter under ordinance governing same, and agrees that said meter may be available only during the time allotted for delivering the water apportioned.

Name.	No. meter.	Size.

134 EXHIBIT B.

San Diego Land & Town Company, water department.

Checks should be made payable to the order of and all remittances addressed to E. A. Hornbeck, assistant treasurer, National City, Cal.

This company claims that while the amount herein named is in accordance with rates established by board of supervisors, it is inadequate compensation for the water so furnished, and its right and claim to be paid for such water in full at such rates as may be hereafter fixed, pursuant to a decree of court or otherwise, is in no manner waived or compromised by the acceptance of the amount named below.

NATIONAL CITY, CAL., —— —, 189–.

Office hours, 8.00 a. m. to 5 p. m.
Saturdays, 8 a. m. to 2 p. m.

DEAR SIR: Your water rent for the — months ending — is now due. Remit by check, if convenient.

Please return this notice.

Register No. —. Amount, —.

Respectfully, E. A. HORNBECK,
Assistant Treasurer.

Delinquent after the 15th of current month.

135 (Endorsed:) No. 839. In the circuit court of the United States for the ninth circuit, southern district of California. H. C. Osborn *et al.*, plaintiff-, *vs.* San Diego Land & Town Company of Maine, defendant. Aff'd't on part of complainants, on motion to remove bill of review from the files. Filed Nov. 7, 1898. Wm. M. Van Dyke, clerk. Haines & Ward, corner Fourth and D streets, San Diego, Cal., solicitors for complainants.

136 At a stated term, to wit, the August term, A. D. 1898, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the 21st day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Erskine M. Ross, circuit judge.

H. C. OSBORNE ET AL., Complainants,
vs.
SAN DIEGO LAND AND TOWN COMPANY OF MAINE, Defendant. } No. 839.

This cause having heretofore been submitted to the court for its consideration and decision on defendant's motion to strike the bill of complaint from the files and to dismiss said suit, and the court

having duly considered the same and being fully advised in the premises, it is now, on this 21st day of November, 1898, being a day in the August term, A. D. 1898, of said circuit court of the United States for the southern district of California, ordered that said motion to strike the bill of complaint from the files and to dismiss said suit be, and the said motion hereby is, denied.

137 I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court November 21st, 1898, in the cause entitled H. C. Osborne *et al.*, complainants, *vs.* The San Diego Land and Town Company of Maine, defendant, No. 839, and remaining of record therein.

[SEAL.] Attest my hand and the seal of said circuit court this 5th day of December, A. D. 1898.

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 839. U. S. circuit court, ninth circuit, southern district of California. H. C. Osborne *et al. vs.* San Diego Land & Town Company of Maine. Certified copy of order denying motion to strike bill from files. Filed Dec. 5, 1898. Wm. M. Van Dyke, clerk.

138 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

H. C. OSBORNE ET AL., Complainants,
vs.
SAN DIEGO LAND AND TOWN COMPANY OF MAINE, Defendant.

The defendant, The San Diego Land and Town Company of Maine, by protestation, not confessing or acknowledging all or any of the matters or things in the amended bill of complaint contained to be true in such manner or form as therein set forth and alleged, presents and files this its demurrer to the said bill, and for cause of demurrer shows:

1. That it appears by the complainants' own showing in said bill that there is and was no error in the proceeding or decision of said court in the case of Charles D. Lanning, receiver of the San Diego Land and Town Company, *vs.* H. C. Osborne, mentioned and set forth in the bill herein, appearing on the face of the record or otherwise.

2. That it appears from the complainants' own showing in their said bill that they are not nor are any of them entitled to the relief prayed for in their said bill or any relief.

3. That it appears from their own showing by their said bill that there is no such error appearing on the face of the proceedings in the said suit of Lanning, receiver, *vs.* H. C. Osborne *et al.* or otherwise as can be relieved against by bill of review or a bill in the nature of a bill of review.

139 4. That it appears from the complainants' own showing by their said bill that the remedy of the complainants, if any they have, is by appeal and not by bill of review.

Wherefore, and for divers other good causes of demurrer appearing in said bill, the said defendant, here demurring, demurs thereto, and it prays the judgment of this honorable court whether it should be required to make any answer to the said bill, and it prays to be hence dismissed with its reasonable costs in this behalf sustained.

WORKS & WORKS,
WORKS & LEE,
Solicitors for Defendant.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

WORKS & WORKS,
WORKS & LEE,
Solicitors for Defendant.

STATE OF CALIFORNIA, } ss:
County of San Diego, }

John E. Boal, being duly sworn, says he is the general manager of the defendant in the action mentioned in the foregoing demurrer, and that said demurrer is not interposed for delay.

JOHN E. BOAL.

Subscribed and sworn to before me this 25th day of November, 1898.

[SEAL.] LEWIS R. WORKS,
Notary Public in and for the County of San Diego, State of California.

(10c. int. rev. stp.)

140 (Endorsed:) No. 839. U. S. circuit court, ninth circuit, southern district of California. H. C. Osborne *et al.*, complainants, *vs.* San Diego Land and Town Company of Maine, defendants. Demurrer to bill. Received copy of the within demurrer Nov. 25th, 1898. Haines & Ward, solicitors for complainant. Filed Nov. 26, 1898. Wm. M. Van Dyke, clerk. Works & Works and Works & Lee, rooms 420 to 425 Henne building, Los Angelgs, Cal., solicitors for defendant.

141 At a stated term, to wit, the August term, A. D. 1898, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the 28th day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Erskine M. Ross, circuit judge.

H. C. OSBORNE ET AL., Complainants,
vs.
SAN DIEGO LAND AND TOWN COMPANY OF MAINE, Defendant. } No. 839.

By consent of counsel for the respective parties, this cause coming on this day to be heard on the demurrer of the defendant to complainants' bill of complaint, now, pursuant to the stipulation of the said counsel for the respective parties, it is ordered that said demurrer be, and the same hereby is, submitted to the court for its consideration and decision, and thereupon, the court having duly considered the same and being fully advised in the premises, it is now ordered that said demurrer be, and the same hereby is, sustained, with leave to the complainants to amend their said bill of complaint within ten (10) days.

142 I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court November 28th, 1898, in the cause entitled H. C. Osborne *et al.*, complainants, *vs.* The San Diego Land and Town Company of Maine, defendant, No. 839, and remaining of record therein.

Attest my hand and the seal of said circuit court this [SEAL.] 5th day of December, A. D. 1898.

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 839. U. S. circuit court, ninth circuit, southern district of California. H. C. Osborne *et al. vs.* San Diego Land & Town Company of Maine. Certified copy of order sustaining demurrer. Filed Dec. 5, 1898. Wm. M. Van Dyke, clerk.

143 In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

No. 839.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, MRS. E. L. WILLIAMS, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr., H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles,

D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick
141 and Henry Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Daie, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Griefe, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Complainants,

vs.

San Diego Land & Town Company of Maine, Defendant.

145 The complainants filed their bill of review herein on the 12th day of August, 1898, which is hereto annexed.

On the 27th day of October, 1898, the defendant appeared herein, by Messrs. Works & Works and Messrs. Works & Lee, its solicitors.

On the 27th day of October, 1898, defendant filed herein its notice of motion to strike the bill of complaint from the files and to dismiss said suit; which notice and the affidavit of John E. Boal, referred to therein, are hereto annexed.

On the 7th day of November, 1898, said motion came on regularly for hearing before the *the* court—present, the Honorable Erskine M. Ross, circuit judge—whereupon the affidavit of Monroe Johnson was filed herein on behalf of complainants, which affidavit is hereto annexed, and said motion, having been argued by counsel, was thereupon submitted to the court for its consideration and decision.

On the 21st day of November, 1898, the court made and entered an order herein denying said motion to strike the bill of complaint from the files and to dismiss said suit, a copy of which order is hereto annexed.

The demurrer of defendant to complainants' bill was filed herein on the 26th day of November, 1898, and is hereto annexed.

On the 28th day of November, 1898, the court made and entered an order herein sustaining said demurrer, a copy of which order is hereto annexed.

On the 5th day of December, 1898, being a day in the August term, A. D. 1898, of said circuit court—present, the Honorable Erskine M. Ross, circuit judge—came complainants in the suit, by A. Haines, Esq., their counsel, and in open court elected to stand on their bill of complaint, and declined to amend their said bill of complaint, as they were allowed to do by the order of the court entered November 28th, 1898; whereupon, on motion of John D.
146 Works, Esq., of counsel for defendant, a decree dismissing complainants' said bill was signed, filed, entered and recorded herein, and is hereto annexed.

147 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

H. C. Osborne, William Knapp, A. Barber, Mrs. E. L. Williams, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr.; H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. N. Faweett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner,

A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulich, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens,
148 R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, Complainants,

vs.

San Diego Land & Town Company of Maine, Defendant.

The demurrer of the defendant to the bill of complaint of the plaintiffs in the above-entitled cause having been submitted to the court and sustained, and the plaintiffs having elected to stand on their bill, and declining to amend the same as allowed by the court, judgment and decree is now rendered in favor of the defendant on said demurrer.

It is therefore considered and decreed by the court that the plaintiffs take nothing by their bill herein; that said bill be, and the same is hereby, dismissed, and that the defendant have and
149 recover of and from the plaintiffs its costs in this behalf laid out and expended, taxed at $20.50.

ROSS,
Circuit Judge.

December 5th, 1898.

Decree entered and recorded December 5th, 1898.
WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 839. U. S. circuit court, ninth circuit, southern district of California. H. C. Osborne *et al.*, complainants, *vs.* San Diego Land & Town Company of Maine, def't. Decree of dismissal. Filed Dec. 5, 1898. Wm. M. Van Dyke, clerk. Works & Lee, rooms 420 to 425, Henne building, Los Angeles, Cal., solicitors for defendant.

150 Whereupon said bill of review, notice of motion to strike bill from files, and affidavit of John E. Boal, affidavit of Monroe Johnson, copy of order denying motion to strike bill from files, demurrer, copy of order sustaining demurrer, and said final decree are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, etc.,
[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 839. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. H. C. Osborne *et al. vs.* San Diego Land & Town Company of Maine. Enrolled papers. Filed December 5th, 1898. Wm. M. Van Dyke, clerk. Recorded, Decree Register Book No. 2, page 317.

151 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

H. C. OSBORN ET AL., Complainant-,
vs.
SAN DIEGO LAND & TOWN COMPANY OF MAINE, Defendant. } Bond for Costs.

Know all men by these presents that A. G. Gassen, R. A. Thomas, V. E. Shaw, of the county of San Diego, State of California, are held and firmly bound unto the San Diego Land & Town Company of Maine in the sum of $250, lawful money of the United States, to be paid to the said San Diego Land & Town Company of Maine, its successors or assigns; and — which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of August, in the year one thousand eight hundred and ninety-eight.

Whereas the said complainants in said cause are about to file in said circuit court their bill of review for alleged errors apparent in the decree entered in said court in the cause entitled "San Diego Land & Town Company of Maine, substituted as complainant in the place of Chas. D. Lanning, receiver of the San Diego Land & Town Company of Kansas, complainant, *vs.* H. C. Osborn *et al.*, defendants, No. 671," which said decree was made and entered on the 12th day of February, 1898:

Now, therefore, the condition of this obligation is such that if the complainants named in said bill of review shall diligently prosecute the same and shall pay all costs and damages that may be awarded against them as said complainants, then this obligation to be void; otherwise to remain in full force and effect.

152

A. G. GASSEN.
R. A. THOMAS.
V. E. SHAW.

Sealed and delivered in the presence of—
Witness:
A. HAINES.
Witness:
A. HAINES.
Witness:
A. HAINES.

STATE OF CALIFORNIA, } ss:
County of San Diego, }

A. G. Gassen and R. A. Thomas, V. E. Shaw, being severally sworn, depose and say, each for himself:

That he is a resident of the county of San Diego, State of California, and a householder and freeholder in said county, and that he is worth the sum of $500 over and above all exemptions and all just debts and responsibilities.

A. G. GASSEN.
R. A. THOMAS.
V. E. SHAW.

Witness:
A. HAINES.
Witness:
A. HAINES.
Witness:
A. HAINES.

Subscribed and sworn to before me this 11th day of August, 1898, by A. G. Gassen and V. E. Shaw.

[SEAL.] M. L. WARD,
Notary Public in and for San Diego County, State of California.

(10c. int. rev. st'p.)

(Endorsed:) No. 839. Circuit court of the United States, ninth circuit, southern district of California. H. C. Osborn *et al.*, complainants, *vs.* San Diego Land & Town Company of Maine, defendants. Bond for costs. Filed Aug. 12, 1898. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy.

153 At a stated term, to wit, the August term, A. D. 1898, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held

at the court-room, in the city of Los Angeles, on Monday, the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Erskine M. Ross, circuit judge.

H. C. OSBORNE ET AL., Complainants,
vs.
SAN DIEGO LAND & TOWN COMPANY OF MAINE, Defendant. } No. 839.

Now come complainants in this suit, by A. Haines, Esq., their counsel, and in open court elect to stand on their bill of complaint, and decline to amend their said bill of complaint as they were allowed to do by the order of the court entered November 28th, 1898; whereupon, on motion of John D. Works, Esq., of counsel for defendant, a decree is made and signed and directed to be entered herein dismissing complainants' said bill of complaint.

154 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

No. 839.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, MRS. E. L. WILLIAMS, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr., H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Faucett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henniger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W.

Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Ste-
155 phens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhardt, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elizabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arnôt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Freife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Complainants,

vs.

San Diego Land & Town Company of Maine, Defendant.

Petition on Appeal.

The above-named complainants, conceiving themselves aggrieved by the decree made and entered on the 5th day of December, 1898, in the above-entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States for the
156 reasons specified in the assignment of errors, which is filed herewith, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

A. HAINES,
M. L. WARD,
C. H. RIPPEY,
Solicitors for Complainants and Appellants.

Dated Dec. 5th, 1898.
San Diego, Cal., 4th and "D" streets.

The foregoing claim of appeal is hereby allowed in open court at this August term, 1898, in which said decree has been entered.
Dated December 5, 1898.

ROSS,
Circuit Judge.

157 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

No. 839.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, MRS. E. L. WILLIAMS, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Jenkins, Henry Gulick, Sr., H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Faucett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Eila B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henniger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace,

158 George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoch, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. H. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhardt, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elizabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack,

Partners, Doing Business under the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Complainants,

vs.

San Diego Land & Town Company of Maine, Defendant.

Assignments of Error.

And now, on the 5th day of December, 1898, came all the complainants to said action, by A. Haines, M. L. Ward, and C. H. Rippey, their solicitors, and say that in the decree, record, and proceedings in the above-entitled cause there is manifest error, in this, to wit:

159 First. Because the court sustained the first assignment of the demurrer to the said bill of review.

Second. Because the court sustained the second assignment of the demurrer to the said bill of review.

Third. Because the court sustained the third assignment of the demurrer to said bill of review.

Fourth. Because the court sustained the fourth assignment of the demurrer to said bill of review.

Fifth. Because the court, by its ruling upon said demurrer and its decree herein, overruled the first assignment of error set forth in said bill of review.

And thereby erroneously ruled and adjudged that the exceptions filed September 22, 1897, in said original cause, to the further and supplemental answer filed Sept. 13, 1897, raised for decision the merits of the defenses set forth in the answer; that said exceptions were properly sustained, and that said further answer and supplemental answer was properly expunged from the record, and was properly not to be considered on the final hearing of said cause, and that said cause was properly not set down for hearing on bill and answer, or tried on issues joined and proofs made.

Sixth. Because the court, by its ruling upon said demurrer and by its decree herein, overruled the second assignment of error set forth in said bill of review.

And thereby erroneously ruled and adjudged that the court in said original cause properly ruled and held upon the first exception to said answer, among other things erroneous, the following, to wit:

That all of the allegations of said further answer and supplemental answer setting forth that the waters and water system of the San Diego Land & Town Company of Kansas were its private property were immaterial, irrelevant, and impertinent.

And that all the allegations of said answer setting forth that
160 said corporation, by the contracts, agreements, conveyances, transfers, acts, representations, classifications, and admissions

made by it and made under the circumstances, all as in the answer set forth, did grant to and vest in your orators and did recognize and acknowledge their water rights and freehold easements of the flow and use of water from said water system as appurtenant to lands owned respectively by your orators and as constituting corresponding freehold servitudes on said company's water system were immaterial, irrelevant, and impertinent, and that they were so in virtue of the constitution and laws of the State of California.

And that all the allegations of said answer setting forth that all claims and demands of said company for the price or compensation for said water rights, easements, and servitudes had been paid or otherwise satisfied were immaterial, irrelevant, and impertinent, and that all such freehold water rights, easements, and servitudes were void and in conflict with the constitution and laws of said State.

And that all the allegations of said answer setting forth the representations, agreements, and contracts, made by said corporation of Kansas to and with each of your orators, fixing the water rate for irrigation of their lands under their respective water rights, easements, and servitudes at the rate of $3.50 per acre per annum were irrelevant, immaterial, and impertinent, and that any such contracts or agreements are in conflict with the constitution and laws of the State of California and void, and that all such allegations of the contractual fixing of water rates in connection with all such allegations of water rights, easements, and servitudes were altogether impertinent in defense to the demand of said corporation and its said receiver to increase without the consent of your orators the rate of $3.50 per acre per annum for irrigation of their lands to $7 per acre per annum.

161 And that all the allegations of said answer setting forth that the rate of $3.50 per acre per annum for irrigation of the lands of your appellants was the only rate which had ever been actually established and collected by said corporation were immaterial, irrelevant, and impertinent.

And that the allegations that your appellants were induced to purchase, improve, and settle upon their respective tracts of land in reliance upon said established rate of $3.50 per acre were immaterial, irrelevant, and impertinent.

And that the allegations that your appellants had for more than five years held and enjoyed the use of said water upon their land for irrigation purposes at said annual rate of $3.50 per acre, and that the right to have and enjoy the use of said water at said rate became vested in your appellants respectively by operation of the statute of limitations of the State of California, were immaterial, irrelevant, and impertinent.

And that all the allegations of said answer setting forth the total irrigating capacity of said water system and the proportion of the same not used and all the other facts and circumstances pertaining to the reasonableness of said increase of rate set forth in said answer were irrelevant, immaterial, and impertinent to be answered to such demanded increase.

And that the denial that said corporation was entitled to demand from your appellants water rentals beyond $3.50 per acre per annum to apply upon the demanded net income of six per cent. per annum was immaterial, irrelevant, and impertinent.

And that the denial that the compensation to said corporation for either of your appellant's respective water rights, easements, and servitudes was or still is subject to regulation by any board of supervisors of said State, as provided in said act of 1885, was irrelevant, immaterial, and impertinent.

And that the denial that at the said rate of $3.50 per acre per annum for irrigation, together with rates for domestic use, if water should be demanded and used upon the whole of the land which the
162 said system is able to supply with water, said company would not be able to pay its operating expenses and maintain from such rentals its plant and system, and the denial that by reason of said established rate said company was losing money, and the denial that the plant of said company is going to decay, without sufficient resources from said rate for replacing the same, and that the denial that said company at said rate of $3.50 will be compelled to furnish water to consumers at any loss, or that, if said rate of $3.50 is maintained, said system will be lost, are immaterial, irrelevant, and impertinent.

And that the allegations of the requirement as a condition to the refraining by said company and its receiver from shutting off the supply of water to each of your orators under their respective water rights and easements, that your orators should subscribe and execute the agreement, designated "Application for water," set forth in the answer, *was* immaterial, irrelevant, and impertinent.

And that the denial that any increase of the said rate of $3.50 is at all necessary to enable said corporation or its receiver to maintain and operate said water plant and pay the expenses of the maintenance and operation thereof is irrelevant, immaterial, and impertinent.

That the allegations relating to the amount in controversy as to each of your orators and as affecting the jurisdiction are irrelevant, immaterial, and impertinent.

And that the allegations of the answer which rely upon and invoke the application of the provisions of section one of article XIV and of article V of the amendments to the Constitution of the United States, and which rely upon and invoke the application of section one of article I and of section nine of article XX of the constitution of California, and which rely upon and invoke section
11½ of the amendment of the act of March 12, 1885, of the
163 State of California, set forth in said answer, and each of them, are immaterial, irrelevant, and impertinent.

Seventh. Because the court, by its ruling upon said demurrer and by its decree herein, overruled the third assignment of error set forth in said bill of review.

And thereby erroneously ruled that the court properly ruled in the original cause, upon exception second to the answer, that the said answer was evasive and uncertain in that it did not show which

of the defendants to said original cause acquired their water rights from the San Diego Land & Town Company of Kansas by purchase and how much they paid therefor to said company, although the bill of complaint in said original action alleges that each of the defendants thereto was the owner of a water right by purchase or otherwise, and alleges no distinction or discriminati n between such rights, whether acquired by purchase or otherwise, and calls for no answer as to which became owners of such rights by purchase or which became owners otherwise, and although said answer shows that the water rights, easements, and servitudes, however acquired, are each in freehold, that each was created by said corporation of Kansas, and that compensation for each has been paid, or that satisfaction has otherwise been made to said corporation for the same.

Eighth. Because the court, by its ruling upon said demurrer and by its decree herein, overruled the fourth assignment of error set forth in said bill of review.

And thereby erroneously ruled and adjudged that the court in the original cause correctly sustained the third exception to the said answer, and erroneously reaffirmed the ruling on said exception that it is admitted by said answer that the actual and just cost of the water works and system of the said San Diego Land & Town Company of Kansas is $750,000, and erroneously reaffirmed the ruling on said exception that it affirmatively appears from said answer that the annual rental of $7 per acre will not and cannot realize to the San Diego Land & Town Company of Maine six per cent. net increase per annum on its investment.

164 And erroneously reaffirmed the ruling on said exception that the law of the State of California allows said company as against these appellants, defendants to the original bill, as a reasonable return on their investment, not less than six nor more than eighteen per cent. net on the value of said plant and system without regard to the water rights, easements, and servitudes acquired by each of said defendants from said San Diego Land & Town Company of Kansas, and owned by them respectively as set forth in the said answer, and without regard to the agreements of said company with your orators as to the annual rate of $3.50 per acre per annum, and without regard to the rate of $3.50 per acre per annum established by said corporation at the time when said water rights, easements, and servitudes respectively rested in said defendants, and ever since collected, all as set forth in said answer.

Ninth. Because the court, by its ruling upon said demurrer and by its said decree, overruled the fifth assignment of error set forth in said bill of review.

Whereby it erroneously reaffirmed the former ruling sustaining the fourth exception to said answer that said exception was sufficient in form to point out to and inform the defendant what matters in said original bill were not well or sufficiently answered or respecting which the denials or averments of the said answer are evasive, imperfect, or insufficient.

And whereby it erroneously reaffirmed that the denials, admis-

sions, or averments in said answer are evasive, imperfect, and insufficient.

Tenth. Because the court, by its ruling upon said demurrer and by said decree, overruled the sixth assignment of error set forth in said bill of review.

Whereby it erroneously reaffirmed its ruling sustaining the exception numbered fifth to the answer that the question whether it appears from the answer of the defendants that the com-
165 plainant receiver has legally established and is entitled to collect the water rental of $7 per acre per annum for the irrigation of the lands of each of the defendants respectively, is properly triable upon exception to the answer.

And whereby it erroneously reaffirms its ruling that it appears affirmatively or otherwise from said answer that said corporation of Kansas and the said receiver, complainant, had or has legally established and is entitled to collect a water rental of $7 per acre per annum for the irrigation of the lands of the defendants or any of them.

And whereby it erroneously reaffirms its ruling that the said defendants had no standing in said court to contest the reasonableness of the rate of $7 per acre per annum demanded by the complainant to such original bill, but that their remedy, if any they had, was to apply to the board of supervisors of the county in which their said land is situated to fix and establish the rates to be paid for such water.

And whereby it erroneously reaffirms its ruling in so construing and applying to this cause the statute of California approved March 12th, 1885, referred to in the original bill of complaint, as that said statute operated and operates to deprive each of said defendants of his, her, and its water rights, easements, and servitudes, and of the right to enjoy the same at the rate of $3.50 per acre per annum, actually established and collected by said corporation and as established by the contracts, all as in said answer set forth and all without due process of law, and to deprive said defendants of their liberty to contract for their said water rights, easements, and servitudes without due process of law, and to deny to each of said defendants the equal protection of the laws, all in contravention of section one, article XIV, of the amendments to the Constitution of the United States and article V of the amendments to the Constitution of the United States, and erroneously rules that said
166 statute so construed is not in conflict with article I, section one, of the constitution of the State of California and is not in conflict with section nine (9), article twenty (20), of the constitution of the State of California.

Eleventh. Because the court, by its ruling upon said demurrer and by its decree, overruled the seventh assignment of error set forth in said bill of review.

And thereby erroneously reaffirms its ruling on the sixth exception to the said answer; that such exception did properly raise and present the question whether said answer shows on its face that complainant is legally or equitably entitled to collect the rate of $7

per acre for irrigation of the lands of said defendants and whether said raised rate was reasonable and just.

And erroneously reaffirms its ruling that the facts set forth in said answer sustain the charge set forth in said sixth exception.

Twelfth. Because the court, by its ruling upon said demurrer and by its decree, overruled the eighth assignment of error set forth in said bill of review.

Whereby it erroneously ruled that the order made and entered December 6, 1897, in said original cause substituting the San Diego Land & Town Company of Maine, as complainant, in place of the original complainant, Charles D. Lanning, receiver of the San Diego Land & Town Company of Kansas, was not irregular nor in disregard of rule 57 of the rules of practice for the courts of equity of the United States; and further erroneously overruled and disallowed the showing of error that by virtue of said order of substitution the said defendants to said original bill were denied opportunity to demur, plead, or answer to any supplemental bill setting forth any alleged interest in said cause of the San Diego Land & Town Company of Maine.

Thirteenth. Because the court, by its ruling upon said demurrer and by its decree, overruled the ninth assignment of error set forth in the bill of review.

167 Whereby the court erroneously reaffirmed its order, entered in said cause January 3, 1898, that the original bill of complaint be taken *pro confesso* against said defendants for want of an answer, for that, notwithstanding the sustaining of the exceptions for immateriality, irrelevancy, and impertinence to all those parts of the answer set forth in exception numbered first and the expunging the same, the admissions, denials, and averments in the answer not excepted to raised material issues in said cause; that such remaining admissions, denials, and averments of said answer show in substance that said San Diego Land & Town Company of Kansas was the owner of a water system and franchise, as set forth in its articles of incorporation, shown in the answer; that said corporation completed its said system in Feb., 1888; that how much money said company expended up to January 1, 1896, in acquiring and constructing said system the defendants had no knowledge, information, nor belief.

That the right and title of said company to its said water system is subject to the rights of the defendants respectively as follows: That each defendant owning land, as alleged in the complaint, has become the owner of a water right and a part of the water appropriated and stored by said company necessary to irrigate his and her land; that such water rights extend not only to the irrigation of the defendants' respective tracts of land, but also to supplying the needs of the persons resident and animals kept thereon respectively.

That each said water right embraces the right and easement of the service of the reservoir and distributing system of said corporation for the delivery of water at and upon said respective tracts of land for all uses by automatic gravity pressure existing under

said system and including the right to have said corporation maintain said system efficiently to conduct the water to and deliver the same on the premises of each of the defendants for irriga-
168 tion and other uses at and for the annual rates to be deemed and accepted as the legally established rates therefor.

That at the times mentioned in the bill of complaint said company was furnishing the defendants and each of them with water through its said system; that said company has at all times treated its lands under irrigation from said system as being on precisely the same footing as to annual rates with the lands of each of the defendants and has entered upon its books the same rate per acre per annum chargeable to its own lands as that charged to the lands of defendants; that said receiver has done likewise.

That the annual expense of said corporation to operate and maintain its water system does not exceed the sum of $12,034.99.

That said company commenced to furnish water to consumers regularly in February, 1888; that in said month of February, 1888, it fixed and established and has since charged the rate of $3.50 per acre as the annual rate for irrigation and no more until January 1, 1896.

That in order to pay the company the amount of its expenses and an annual income of 6 per cent. upon the whole present cost and present value of its water system it is not necessary that the rates for water sold and consumed should exceed the sum of $32,000 per annum; that the present cost and the present cash value of the property constituting said water system does not exceed the sum of $300,000, and that not over one-half of the capacity of said system was on January 1, 1896, in use.

And that not over two-thirds of the capacity of said system was in use when said answer was filed.

That in order to pay the cost of operating the plant of said company and maintain the same and pay said company as much as 6 per cent. net annual revenue upon the present cost and cash value of its plant and water system it is not and will not be necessary to charge a rate per annum of not less than $7 for irrigation
169 purposes or any sum in excess of $3.50 per acre per annum for irrigation purposes in connection with the rate for water for domestic use under said system actually established and collected.

That no petition has ever been presented to the board of supervisors of the county in which said system is situated for the fixing of water rates thereunder.

That said land & town company and the complainant receiver gave notice that on January 1, 1896, they would undertake to establish a rental of $7 per acre per annum for water supplied to the respective lands of defendants.

That at the date of said notice the defendants were and for a long time prior thereto had been in the continued enjoyment of their said water rights and easements to the flow of the water thereunder, and were paying and always had paid to said company $3.50 per acre per annum for each acre irrigated by each of them.

That each of the defendants refused to pay said rate of $7 per acre per annum; the admission that the defendants do maintain that neither the said land & town company nor said receiver has any legal or equitable right to fix the amount to be paid by any of them for such water for irrigation, and that the rate of $3.50 per acre per annum actually established by said land & town company by the contracts, conveyances, use, and practice as set forth in the answer, and which rate has at all times since the inauguration of said water system been collected and paid for the use of said water, must be and remain and of right ought to be and remain the established rate to be paid by these defendants for such use as against the said attempt of said company and the complainant to raise the same to $7 per acre per annum.

That article XIV of the constitution of the State of Califor-
170 nia and of the legislative act of the said State of March 12, 1885, included the provision that until water rates should be established by the board of supervisors or after they should have been abrogated by such board, as in the said act provided, the actual rates established and collected by each * * * corporation then furnishing or that should thereafter appropriate waters for sale, rental, or distribution to the inhabitants of any county of said State should be deemed and accepted as the legally established rates thereof.

The admission that in order to enforce the payment of said proposed rental of $7 per acre per annum the complainant caused the water to be shut off from the premises of each of the defendants until such demanded rental should be paid.

The admission that the proposed increase of rates, if collected from all lands irrigated under said system, including those of said corporation, would increase the rentals collected by the company to not less than $14,000 per annum.

The admission that the complainant Lanning was appointed receiver, as alleged in the bill of complaint.

That all said matters and other matters in said answer not excepted to, taken together with the allegations of the bill of complaint, raised material issues in said cause.

And appellants say that by said erroneous reaffirmance of said order for taking said bill of complaint *pro confesso* each of the defendants was deprived of a hearing upon the merits of said unexpunged portions of the answer and the issues made thereby.

Fourteenth. Because the court by its ruling upon said demurrer and by its decree herein overruled the 10th assignment of error set forth in the bill of review.

Whereby the court erroneously reaffirmed its decision that the allegations of the original bill of complaint warranted the decree entered *pro confesso* in favor of complainant.

Fifteenth. Because the court by its ruling upon said demurrer and by its decree herein overruled the 11th assignment of
171 error set forth in the bill of review.

Whereby the court erroneously ruled and held herein that its decree in said original cause was not, upon the allegations of the

bill of complaint therein, against the statute law of the State of California entitled "An act to regulate and control the sale, rental, and distribution of appropriated water," &c., approved March 12, 1885, and as amended by the act of the legislature of said State approved March 2, 1897, in this, to wit:

That it appears on the face of said bill that the San Diego Land & Town Company of Kansas at the time when it commenced to furnish water to consumers, to wit, in the year 1887, established the annual rate of $3.50 per acre for irrigation, and that said corporation and C. D. Lanning, as its receiver, from said date continually maintained and collected said rate and no more from all consumers and at no time collected any other rate, and that said rate at the time of filing said bill was and at the date of said decree remained the only actual rate established and collected by said corporation or its said receiver, and that it further appears by the said bill that the board of supervisors of the county of San Diego mentioned in the complaint had not fixed or established rates of yearly rental at which said San Diego Land & Town Company should furnish water to consumers.

And that by the said statute law it was and is provided that until such rates should be so established by such board of supervisors the actual rates established and collected by every such corporation should be deemed and accepted as the legally established rate thereof, and that said statute law further provided and provides that every such corporation furnishing water to lands, as did said Kansas corporation to the defendants (the appellants), as alleged in said bill, shall furnish such waters at rates not exceeding the established rates as fixed and established by such corporation as provided in said act, and that said statute pro-
172 vided and provides that every such company shall be obliged to furnish such water at the established rates regulated and fixed therefor as in said act provided to the extent of the actual supply of the waters of such corporation.

And that by said decree the appellants, defendants in said action, are deprived of the use of water from said system for irrigation at the rate actually established and collected by the San Diego Land & Town Company of Kansas at the time when said defendants respectively became owners of their water rights and at the only rates at any time actually established and collected by said corporation or its said receiver prior to and since said vesting of the said water rights, to wit, at the rate of $3.50 per acre per annum.

Sixteen. Because the court by its ruling upon said demurrer and by its decree herein overruled the twelfth assignment of error set forth in the bill of review.

Whereby the court erroneously holds that the decree in said original cause, upon the allegations of the bill therein, is not against the right of these appellants, named as defendants to said bill, in that said bill of complaint shows upon its face that your orators are the owners respectively of tracts of land under the water system of said San Diego Land & Town Company of Kansas, and that your orators own and hold small tracts of land of only a few

acres each, and said bill further shows that each of your orators respectively had become and was the owner of a water right to such part of the water appropriated and stored by said company as is necessary to irrigate his tract of land, subject to such yearly rental as said company was entitled to charge.

And that it further appears on the face of said bill that the annual expense of operating and keeping in repair the reservoir and water system of said company and of furnishing all consumers under said system is, exclusive of interest on the bonds of said company, the sum of $12,034.99.

173 And that it further appears from said bill that the annual income from water rates collected under said system was $25,715.00, and in that it further appears from said bill that the rate actually established and collected by said company for furnishing water for irrigation of the lands of your orators and *his* codefendants named in said bill under their said water rights was $3.50 per acre per annum, and that the proceeds of the same enters into the aggregate annual income of said water system.

And in that notwithstanding the said bill further shows that said company and the said C. D. Lanning, the receiver of said company, the complainant therein, gave notice to your orators, defendants to said bill, that from and after January 1, 1896, they would demand a rental of $7.00 per acre per annum for water for irrigation, being twice the rate up to that time actually established and collected by said company or its receiver for furnishing your orators with such water, and notwithstanding that said bill further shows that because your orators and each of them refused to pay said rate of $7.00 per acre, and maintained that neither said land & town company nor said C. D. Lanning, as receiver thereof, had any legal right to increase the amount of rental to be paid by them or any of them, and maintained that the rate of $3.50 established and collected by the said land & town company must be and remain the established rate of rental, the said receiver, in order to enforce the payment of said increased rentals, caused the said water to be shut off from the premises of the defendants and each of them, and did deprive the appellants, defendants in said action, of the use and enjoyment of their said water rights upon payment of the rates of $3.50 per acre per annum actually established and collected by said corporation and collected by said receiver.

Yet said rulings and decree upon the bill of review herein hold that said original decree does not erroneously hold, decide, and decree that said San Diego Land & Town Company of Kansas

174 and Charles D. Lanning, receiver thereof, had the right to increase the amount of the water rentals of said company for water furnished to the la-ds of said defendants from $3.50 per acre per annum to the sum of $7.00 per acre per annum without the consent of any of your appellants, and does not erroneously hold, decide, and decree that your appellants should be r-quired to pay to the San Diego Land & Town Company of Maine said rate of $7.00 per acre per annum for water furnished to their lands, as set forth in the said bill of complaint, from and after the first day

of January, 1896, until the fixing and establishing of such rates by the board of supervisors of San Diego county, California, or the re-establishment thereof in accordance with law as a condition upon which water should be furnished them from said water system, and does not erroneously hold, decide, and decree that the San Diego Land & Town Company of Maine is authorized to shut off the supply of water for irrigation of such lands of any of your appellants, the defendants to said bill, who should fail for five days to make such payment of arrears of said increase of water rate.

Whereby your appellants, the said defendants, are deprived of all benefit of the ownership of their water rights and, notwithstanding said ownership, are required as a condition to the enjoyment of their said easements to pay to said San Diego Land & Town Company of Maine an annual rate to yield, as appears by said bill, an excess over and above the actual cost of repairs, operation, and management of said water system as and for interest and net revenue upon the whole cost and value of said system and without regard to the servitudes thereon owned by your appellants.

Seventeen. Because the court by its ruling upon said demurrer and by its decree herein overruled the thirteenth assignment of error set forth in the bill of review herein.

Whereby the court erroneously reaffirmed its decree in said original cause and holds that said decree on its face and on the
175 face of said original bill does not enforce legislation of the State of California, so construed as that it is in violation of sec. one (1) of article XIV of the amendments of the Constitution of the United States, in that the legislation, so construed and enforced, maintains the San Diego Land & Town Company of Kansas and C. D. Lanning, its receiver, in increasing the water rentals for water furnished to the lands of your appellants for irrigation of their respective lands from $3.50 per acre per annum to $7.00 per acre per annum for such irrigation without the consent of your appellants, and in that said legislation, so construed and enforced, justifies and maintains the said Kansas corporation and the said receiver and the San Diego Land & Town Company of Maine in having shut off the flow and use of the water under the water rights owned by the defendants to said bill from the lands of such defendants (the appellants), as shown in said bill, for refusal to pay such increase of rate, and in that said legislation, as so construed and enforced, requires said defendants to pay the San Diego Land & Town Company of Maine the rate of $7.00 per acre per annum for water furnished their lands, as set forth in said bill of complaint, from and after January 1, 1896, as the condition upon which water shall be furnished them from said water system, and in that the legislation, so construed and applied, authorizes said last-named corporation to shut off the supply of water to any defendant who shall for five days fail to pay such increase of rate; by which means each of your orators is deprived of his, her, and its property without due process of law, and each is likewise deprived of the equal protection of the laws, and each is likewise without due process of law deprived of his, her, and its liberty to purchase or

otherwise acquire the water rights in the complaint referred to and is deprived of his, her, and its liberty to have the benefit of any acquisition, as in the complaint set forth, of such water rights.

And whereby it was erroneously held that said decree is
176 not, for the reasons —, in contravention of article V of the amendments to the Constitution of the United States, as being an exercise of the judicial power of the United States, whereby your appellants are deprived of their property without due process of law, and whereby they are deprived, without due process of law, of their liberty to contract and acquire property.

Eighteen. Because the court by its ruling upon said demurrer and by its decree herein overruled the fourteenth assignment of error set forth in the bill of review herein.

Whereby the court erroneously held herein that it was not error apparent in said original decree, in that it was entered *pro confesso* and without proofs upon the allegations of the bill and without regard to the expunged portions of the answer and without regard to the portions of the answer expunged on said exceptions filed September 22, 1897, and because it ruled, in conformity to the opinion filed in said action Sept. 14, 1896, adopted by and referred to in said decree, that, notwithstanding the alleged fact that $3.50 per acre per annum was the only rate for water supplied for irrigation that had been established and collected by said San Diego Land & Town Company of Kansas or said Charles D. Lanning, receiver, that said San Diego Land & Town Company and Charles D. Lanning, receiver, had the right to increase the amount of the water rentals of said company for water furnished to the lands of defendants (your appellants) from $3.50 per acre per annum to the sum of $7.00 per acre per annum for such irrigation, and that the contracts with respect to the rates of $3.50 per acre per annum set forth in the answer were void as being in conflict with the constitution and laws of the State of California, and because it ruled that your orators had no right to be heard before the court on the questions of the reasonableness of the rates of $7.00 per acre per annum, which the complainant in said action sought to enforce and which said decree enforces, and because it ruled that the defendants
177 to said bill of complaint (your appellants) were not entitled, upon the question of the rightfulness and lawfulness of the increase of the rate of $3.50 per acre per annum to $7.00 per acre per annum, to have any benefit of the ownership of their respective water rights as set forth in the bill of complaint or of their freehold easements and servitudes upon said company's water system as set forth in their answer, nor of the alleged fact that each had paid or made satisfaction to said San Diego Land & Town Company of Kansas for the price demanded by it for his, her, and its such water right, easement, and servitude.

That in point of law, among other things, said errors are, to wit:

1st. Said decree in said respects erroneously construes and applies the provisions of the constitution and laws of the State of California referred to in the bill of complaint and answer.

2nd. That said provisions of the constitution and laws as so con-

strued and applied by said decree are in contravention and repugnant to article XIV, sec. I, of the amendments to the Constitution of the United States, as depriving your appellants of their property without due process of law, and as depriving them of their liberty of contract without due process of law.

3rd. That in applying the said provisions of the State constitution and statutes, as so construed by said decree and the opinion referred to therein, the judicial power of the United States was exercised in contravention of article V of the amendments to the Constitution of the United States and deprived the defendants in said action (your appellants) of their property without due process of law and of their liberty of contract without due process of law.

4th. And that the provisions of article XIV of the constitution of the State of California, as so construed, applied, and en-
178 forced by said decree, are in violation of the guarantee by section IV of article IV of the Constitution of the United States of a republican form of government to said State of California, in that by said provision of the constitution of said State as so construed, applied, and enforced the said State assumes the absolute control of all water appropriated and devoted to sale, rental, and distribution and the absolute control of all works devoted to the supplying or distribution of such waters; abolishes all capacity for the acquisition of private property rights, easements, or servitudes in such water supply and water works; abolishes all right to unite the ownership of any water supply from any such system with the ownership of lands for irrigation thereof by contract of purchase and payment or otherwise; abolishes all right or capacity for the acquisition of any water right, easement, or servitude in or upon any such water system by purchase or otherwise free from the perpetual obligation to pay net revenue, as the said statute now stands, of not less than six nor more than eighteen per cent. per annum upon the cost or value of such water system, and abolishes all right or capacity to ascertain, fix, and define by contract or convention the rate or compensation to be paid by any consumer for the supplying of any such waters for irrigation of land.

Nineteen. Because the court by its ruling upon said demurrer and by its decree herein overruled the fifteenth assignment of error set forth in the bill of review herein.

Whereby the court erroneously held herein that there was no error apparent in said original decree, in that said decree is made in favor of the San Diego Land & Town Company of Maine, although said corporation has not become a party to the record in said cause by supplemental bill or otherwise, and what interest, if any, said corporation hath or had in said action does not appear upon the record, nor was any claim on its part to any interest so set forth
that the defendants to said bill of complaint, your orators,
179 could in anywise make answer thereunto or plead thereunto.

Twenty. Because the court by its ruling upon said demurrer and decree herein overruled the sixteenth assignment of error in the bill of review herein.

Whereby the court erroneously held herein that there is no error

apparent in said original decree, in that this court was without jurisdiction to entertain said cause or to make any decree upon the merits therein.

Twenty-one. Because the court by its ruling upon said demurrer and decree herein overruled the seventeenth assignment of error in the bill of review herein.

Whereby it erroneously held herein that there is no error apparent in the said order of the court made on the third day of January, 1898, denying the motion of defendants in said cause to dismiss said suit and in retaining the jurisdiction thereof after the discharge of C. D. Lanning, receiver, the complainant therein, made by order of the court on the 6th day of December, 1897.

Wherefore the said defendants and appellants pray that the said decree of the said circuit court upon said bill of review be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of said bill of review.

A. HAINES,
M. L. WARD,
C. H. RIPPEY,
Solicitors for Complainants.

(Endorsed:) United States circuit court, ninth circuit, southern district of California. No. 839. In equity. H. C. Osborn *et al.*, complainants, *vs.* San Diego Land & Town Company of Maine, defendants. Petition on appeal and assignment of errors. Filed Dec. 5, 1898. Wm. M. Van Dyke, clerk. A. Haines, M. L. Ward, and C. H. Rippey, solicitors for complainants.

180 At a stated term, to wit, the August term, A. D. 1898, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Erskine M. Ross, circuit judge.

No. 839.

H. C. Osborne, William Knapp, A. Barber, Mrs. E. L. Williams, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr., H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C.

Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw, A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson,

181 John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick and Henry Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arnot, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Complainants,

vs.

San Diego Land & Town Company of Maine, Defendant.

182 On motion of A. Haines, Esq., of counsel for the complainants in said cause, it is ordered that the appeal of the said complainants from the order and decree made and entered on the 5th day of December, 1898, in the above-entitled cause to the Supreme Court of the United States be, and the same hereby is, allowed, and that a transcript of the record, pleadings, papers, and proceedings upon which said order and decree were made, duly authenticated, be sent to the said Supreme Court of the United States. It is further ordered that the said appeal be, and the same hereby is, made returnable before the said Supreme Court of the United

States on the 1st day of February, 1899, and, no supersedeas being desired by the appellants, it is further ordered that the amount of the bond for costs to be given by said appellants be, and hereby is, fixed at five hundred (500.00) dollars.

183 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

H. C. OSBORNE ET AL., Complainants, vs. SAN DIEGO LAND & TOWN COMPANY OF Maine, Defendants.	No. 839. In Equity. Bond on Appeal.

Know all men by these presents that we, H. Gulick, Jr.; George Daschbaugh, P. B. Smith, A. C. Crockett, Herbert B. Howe, C. S. Johnson, A. P. Carr, F. B. Merriam, J. W. Stearns, D. K. Adams, as principals and in behalf of all the complainants and appellants in said action, and Hans Marguard and H. C. Hodge, as sureties, are held and firmly bound unto the defendant, The San Diego Land and Town Company of Maine, in the full and just sum of $500, to be paid to the said defendant, San Diego Land & Town Company of Maine, and its certain attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of December, 1898.

Whereas lately, at the circuit court of the United States for the southern district of California, in a suit depending in said court between H. C. Osborn and other complainants and said San Diego Land & Town Company of Maine, defendant, a decree was rendered against all the complainants in said action, and all the said complainants having obtained an appeal to the Supreme Court of the

184 United States and filed the same in the clerk's office of the said court to reverse the decree in the aforesaid suit, at the August term, 1898, of said court, being the term at which said decree was rendered:

Now, the condition of the above obligation is such that if the said complainants shall prosecute their appeal to effect and answer all costs if they fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

Witness our hands and seals as of the date first above written.

H. GULICK, JR.
GEORGE DASCHBACH.
P. B. SMITH.
A. C. CROCKETT.
C. S. JOHNSON.
H. B. HOWE.
E. P. CARR.
F. B. MERIAM.
J. W. STEARNS.
D. K. ADAMS.
HANS MARGUARD.
H. C. HODGE.

STATE OF CALIFORNIA, } ss:
County of San Diego, }

Hans Marguard and H. C. Hodge, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, having severally sworn, each for himself, says that he is worth the amounts *specified in said undertaking as the penalty thereof over and above* all his just debts and liabilities, exclusive of property exempt from execution, and that he is a resident and freeholder within the State of California.

HANS MARGUARD.
H. C. HODGE.

Subscribed and sworn to before me this 10th day of December, 1898.

M. L. WARD,
[SEAL.] *Notary Public in and for the County of San Diego, State of California.*

(10c. int. rev. stp.)

Approved in open court by—
ROSS,
Circuit Judge.

185 (Endorsed:) United States circuit court, ninth circuit, southern district of California. No. 839. In equity. H. C. Osborn *et al.*, complainants, *vs.* San Diego Land & Town Company of Maine, defendant. Bond on appeal. Filed Dec. 12, 1898. Wm. M. Van Dyke, clerk.

186 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

No. 839.

H. C. OSBORNE, WILLIAM KNAPP, A. BARBER, MRS. E. L. WILLIAMS, T. M. Eaton, J. M. Davidson, A. J. Smith, A. Hammond, John T. Judkins, Henry Gulick, Sr.; H. S. Whittaker, A. Barnett, J. N. Woodward, A. B. Stephens, John Nickson, J. H. Fawcett, Payne Brown, W. E. Montgomery, Monroe Johnson, A. Haines, M. L. Ward, Ella B. Ward, A. Keene, Fred Keene, E. K. Earle, H. F. Earle, Thomas Walker, A. G. White, W. J. Brower, P. B. Smith, F. B. Merriam, H. Hyatt, H. Stegeman, R. S. Harris, A. A. Gooden, G. A. Dukes, C. H. Rippey, Virginia Rippey, C. C. Jobes, J. L. Griffin, Tallie Spencer Sullivan, W. C. Kimball, J. C. Frisbie, S. W. Morgan, George Hannahs, F. B. Webb, John Haberfellner, W. S. Wilkins, S. W. Haines, Chula Vista School District, S. Healey, M. E. Phinney, D. L. Murdock, Dan. P. Stetzelberger, R. P. Middlebrook, Anson Titus, W. A. Henry, J. W. Preston, W. E. Ballinger, J. H. Blakeslee, Herman Banke, J. C. Alles, D. K. Adams, A. J. Morley, C. F. Wiggins, S. F. Dickinson, O. C. Noyes, J. E. Clouse, Peter Morse, E. W. Dyer, Parsons Shaw,

A. C. Crockett, E. E. Flanders, Elisha M. Gavin, Stephen Sheffield, C. A. Whittemore, F. Gardner, Charles Monnike, Carl Reinisch, David K. Horton, George Henninger, J. M. Cook, O. H. P. Forker, I. N. Lamson, George D. Hayes, A. A. Groat, R. H. Longshare, J. G. Shaw, Julian Field, C. E. Foss, Otto Sollner, A. B. Story, L. E. Allen, C. F. Chadwick, A. R. Schulenburg, James W. Jackson, John H. Ferry, Frank W. Hedges, A. V. Bills, C. L. Barber, A. J. Stokes, T. E. Walker, A. J. Grainger, E. P. Hammack, Wah Hong, Edward Gulick and William Gulick
187 and Henry Gulick, Partners, Doing Business under the Firm Name of Gulick Brothers; John J. Jones, Wm. D. Webber, W. F. Stearns, W. J. Henderson, P. W. Morse, O. Darling, S. J. Bradt, R. W. Vaughan, E. J. Elliott, M. E. Jennings Verity, J. E. Stephens, R. G. Wallace, George H. Hancock, Frank Howe, I. N. Morse, Emil O. Hoeh, C. S. Johnson, J. H. Clough, George L. Henderson, M. Cox, John Johnson, A. T. Burr, A. M. Jameson, H. E. Klamer, J. H. Dean, P. S. Leisenring, J. M. Johnson, Ah Quinn, Ah Lit, J. M. Ballou, S. H. Dale, George M. Tutton, E. P. Lounsbury, George W. De Tar, S. D. Foss, Austin Carey, George J. Jecock, D. S. McBean, Quincy A. Petts, Morton Penfield, J. A. Thomas, J. O. Reinhart, William Doyle, F. O. Reinhart, H. I. Atwater, E. H. Woods, N. H. Downs, Edwin S. Belcher, W. G. Terril, T. G. Ellis, W. M. Carr, D. F. Garrettson and Elisabeth A. Garrettson, Executors of the Estate of G. A. Garrettson, Deceased; George M. Darnell, Flora B. Arndt, J. W. Stearns, P. W. Beck, M. G. Miller, J. F. Morrill, Fred W. Pearson, Sunnyside School District, N. J. Pillsbury, Julia Latta, Mary R. Klamer, Thomas Lindsay, E. P. Carr, I. M. Howe and H. B. Howe, Partners, Doing Business under the Firm Name of Howe Brothers; Arthur Ryan and Michael Mack, Partners, Doing Business under the Firm Name of Ryan and Mack; James H. Forbes, J. A. Pinkerton, S. D. Murdock, W. Weitekamp, John L. Davis, George H. Eaton, George Rippe, J. H. Greife, F. W. Reid, R. S. Harris, Sweetwater School District, L. W. Goff, George Dashbaugh, Henry Walker, C. C. Hughes, Frank A. Kimball, Henry Haberfellner, F. Mederle, L. C. Wright, Cyrus Johnson, A. W. Howard, Laura F. Meyer, George F. McMurry, F. H. Downes, N. W. Downes, Complainants,

vs.

San Diego Land & Town Company of Maine, Defendant.

I, Wm. M. Van Dyke, clerk of the circuit court of the
188 United States of America of the ninth judicial circuit in and for the southern district of California, do hereby certify the foregoing one hundred and eighty-five (185) typewritten pages, numbered from 1 to 185, inclusive, and comprised in one volume, to be a full, true, and correct copy of the record, pleadings, papers, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to the Supreme Court of the United States in said cause.

I do further certify that the cost of the foregoing record is $125.55, the amount whereof has been paid me by the appellants in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, this 23rd day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

[Ten-cent U. S. internal-revenue stamp, canceled Jan. 23, 1899. Wm. M. Van D.]

Endorsed on cover: File No., 17,286. S. California C. C. U. S. Term No., 201. H. C. Osborne, William Knapp, A. Barber, *et al.*, appellants, *vs.* The San Diego Land and Town Company of Maine. Filed January 30th, 1899.